

this paragraph shall not apply with respect to services performed by a controlled foreign corporation pursuant to a contract the performance of which is guaranteed by a related person, if (a) the related person's sole obligation with respect to the contract is to guarantee performance of such services, (b) the controlled foreign corporation is fully obligated to perform the services under the contract, and (c) the related person (or any other person related to the controlled foreign corporation) does not in fact (1) pay for performance of, or perform, any of such services the performance of which is so guaranteed or (2) pay for performance of, or perform, any significant services related to such services. If the related person (or any other person related to the controlled foreign corporation) does in fact pay for performance of, or perform, any of such services or any significant services related to such services, subparagraph (1) (ii) of this paragraph shall apply with respect to the services performed by the controlled foreign corporation pursuant to the contract the performance of which is guaranteed by the related person, even though such payment or performance is not considered to be substantial assistance for purposes of subparagraph (1) (iv) of this paragraph. For purposes of this subdivision, a related person shall be considered to guarantee performance of the services by the controlled foreign corporation whether it guarantees performance of such services by a separate contract of guaranty or enters into a service contract solely for purposes of guaranteeing performance of such services and immediately thereafter assigns the entire contract to the controlled foreign corporation for execution.

(ii) *Application of substantial assistance test.* For purposes of subparagraph (1) (iv) of this paragraph—

(a) Assistance furnished by a related person or persons to the controlled foreign corporation shall include, but shall not be limited to, direction, supervision, services, know-how, financial assistance (other than contributions to capital), and equipment, material, or supplies.

(b) Assistance furnished by a related person or persons to a controlled foreign corporation in the form of direction, supervision, services, or know-how shall not be considered substantial unless either (1) the assistance so furnished provides the controlled foreign corporation with skills which are a principal element in producing the income from the performance of such services by such corporation or (2) the cost to the controlled foreign corporation of the assistance so furnished equals 50 percent or more of the total cost to the controlled foreign corporation of performing the services performed by such corporation. The term "cost", as used in this subdivision (b), shall be determined after taking into account adjustments, if any, made under section 482.

(c) Financial assistance (other than contributions to capital), equipment, material, or supplies furnished by a related person to a controlled foreign cor-

poration shall be considered assistance only in that amount by which the consideration actually paid by the controlled foreign corporation for the purchase or use of such item is less than the arm's length charge for such purchase or use. The total of such amounts so considered to be assistance in the case of financial assistance, equipment, material, and supplies furnished by all related persons shall be compared with the profits derived by the controlled foreign corporation from the performance of the services to determine whether the financial assistance, equipment, material, and supplies furnished by a related person or persons are by themselves substantial assistance contributing to the performance of such services. For purposes of this subdivision (c), determinations shall be made after taking into account adjustments, if any, made under section 482 and the term "consideration actually paid" shall include any amount which is deemed paid by the controlled foreign corporation pursuant to such an adjustment.

(d) Even though assistance furnished by a related person or persons to a controlled foreign corporation in the form of direction, supervision, services, or know-how is not considered to be substantial under (b) of this subdivision and assistance furnished by a related person or persons in the form of financial assistance (other than contributions to capital), equipment, material, or supplies is not considered to be substantial under (c) of this subdivision, such assistance may nevertheless constitute substantial assistance when taken together or in combination with other assistance furnished by a related person or persons which in itself is not considered to be substantial.

(e) Assistance furnished by a related person or persons to a controlled foreign corporation in the form of direction, supervision, services, or know-how shall not be taken into account under (b) or (d) of this subdivision unless the assistance so furnished assists the controlled foreign corporation directly in the performance of the services performed by such corporation.

(3) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

*Example (2).* Controlled foreign corporation B enters into a contract with an unrelated person to drill an oil well in a foreign country. Domestic corporation M owns all the outstanding stock of B Corporation. Corporation B employs a relatively small clerical and administrative staff and owns the necessary well-drilling equipment. Most of the technical and supervisory personnel who oversee the drilling of the oil well by B Corporation are regular employees of M Corporation who are temporarily employed by B Corporation. In addition, B Corporation hires on the open market unskilled and semiskilled laborers to work on the drilling project. The services performed by B Corporation under the well-drilling contract are performed for, or on behalf of, a related person for purposes of section 954(e) because the services of the technical and supervisory personnel which are provided by M Corporation are of substantial assistance in

the performance of such contract in that they assist B Corporation directly in the execution of the contract and provide B Corporation with skills which are a principal element in producing the income from the performance of such contract.

*Example (3).* Controlled foreign corporation F enters into a contract with an unrelated person to construct a dam in a foreign country. Domestic corporation M owns all the outstanding stock of F Corporation. Corporation F leases or buys from M Corporation, on an arm's length basis, the equipment and material necessary for the construction of the dam. The technical and supervisory personnel who design and oversee the construction of the dam are regular full-time employees of F Corporation who are not on loan from any related person. The principal clerical work, and the financial accounting, required in connection with the construction of the dam by F Corporation are performed, on a remunerated basis, by full-time employees of M Corporation. All other assistance F Corporation requires in completing the construction of the dam is paid for by that corporation and furnished by unrelated persons. The services performed by F Corporation under the contract for the construction of the dam are not performed for, or on behalf of, a related person for purposes of section 954(e) because the clerical and accounting services furnished by M Corporation do not assist F Corporation directly in the performance of the contract.

*Example (7).* The facts are the same as in example (6) except that M Corporation, preparatory to entering the construction contract, prepares plans and specifications which enable the submission of bids for the contract. Since M Corporation has performed significant services related to the services the performance of which it has guaranteed, the construction of such highway by C Corporation is considered for purposes of section 954(e) to be the performance of services for, or on behalf of, M Corporation.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] SHELDON S. COHEN,  
Commissioner of Internal Revenue.

Approved: November 7, 1968.

STANLEY S. SURREY,  
Assistant Secretary  
of the Treasury.

[F.R. Doc. 68-13655; Filed, Nov. 12, 1968;  
8:48 a.m.]

[T.D. 6982]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

### Integration of Qualified Plans With Social Security Act

On July 6, 1968, notice of proposed rule making to conform the Income Tax Regulations (26 CFR Part 1) under section 401 of the Internal Revenue Code of 1954 to reflect the Social Security Amendments of 1965 (79 Stat. 286) and the Social Security Amendments of 1967 (81 Stat. 821), was published in the FEDERAL REGISTER (33 F.R. 9781). After consideration of all such relevant matter as

was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the change set forth below:

Paragraph (e) (2) of § 1.401-3, as set forth in paragraph 1 of the notice of proposed rule making, is changed.

(Sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] SHELDON S. COHEN,  
Commissioner of Internal Revenue.

Approved: November 8, 1968.

STANLEY S. SURREY,  
Assistant Secretary  
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to reflect the Social Security Amendments of 1965 (79 Stat. 286) and the Social Security Amendments of 1967 (81 Stat. 821) such regulations are amended as follows:

PARAGRAPH 1. Paragraph (e) (2) of § 1.401-3 is amended to read as follows:

§ 1.401-3 Requirements as to coverage.

(e) \* \* \*

(2) (i) For purposes of determining whether a plan is properly integrated with the Social Security Act, the amount of old-age and survivors insurance benefits which may be considered as attributable to employer contributions under the Federal Insurance Contributions Act is computed on the basis of the following:

(a) The rate at which the maximum monthly old-age insurance benefit is provided under the Social Security Act is considered to be the average of (1) the rate at which the maximum benefit currently payable under the Act (i.e., in 1968) is provided to an employee retiring at age 65, and (2) the rate at which the maximum benefit ultimately payable under the Act (i.e., in 2006) is provided to an employee retiring at age 65. The resulting figure is 36 percent of the average monthly wage on which such benefit is computed.

(b) The total old-age and survivors insurance benefits with respect to an employee is considered to be 150 percent of the employee's old-age insurance benefits. The resulting figure is 54 percent of the average monthly wage on which it is computed.

(c) In view of the fact that social security benefits are funded through equal contributions by the employer and employee, 50 percent of such benefits is considered attributable to employer contributions. The resulting figure is 27 percent of the average monthly wage on which the benefit is computed.

Under these assumptions, the maximum old-age and survivors insurance benefits which may be attributed to employer contributions under the Federal Insurance Contributions Act is an amount equal to 27 percent of the earnings on which they are computed. These computations take into account all amendments to the Social Security Act through the

Social Security Amendments of 1967 (81 Stat. 821). It is recognized, however, that subsequent amendments to this Act may increase the percentages described in (a) or (b) of this subdivision, or both. If this occurs, the method used in this subparagraph for determining the integration formula may result in a figure under (c) of this subdivision which is greater than 27 percent and a plan could be amended to adopt such greater figure in its benefit formula. In order to minimize future plan amendments of this nature, an employer may anticipate future changes in the Social Security Act by immediately utilizing such a higher figure, but not in excess of 30 percent, in developing its benefit formula.

(ii) Under the rules provided in this subparagraph, a classification of employees under a noncontributory pension or annuity plan which limits coverage to employees whose compensation exceeds the applicable integration level under the plan, will not be considered discriminatory within the meaning of section 401(a) (3) (B), where:

(a) The integration level applicable to an employee is his covered compensation, or is (1) in the case of an active employee, a stated dollar amount uniformly applicable to all active employees which is not greater than the covered compensation of any active employee, and (2) in the case of a retired employee, an amount which is not greater than his covered compensation. (For rules relating to determination of an employee's covered compensation, see subdivision (iv) of this subparagraph.)

(b) The rate at which normal annual retirement benefits are provided for any employee with respect to his average annual compensation in excess of the plan's integration level applicable to him does not exceed 30 percent.

(c) Average annual compensation is defined to mean the average annual compensation over the highest 5 consecutive years.

(d) There are no benefits payable in case of death before retirement.

(e) The normal form of retirement benefit is a straight life annuity, and if there are optional forms, the benefit payments are adjusted so that the total value of the optional form is the same as the value of the normal form of retirement benefits.

(f) In the case of any employee who reaches normal retirement age before completion of 15 years of service with the employer, the rate at which normal annual retirement benefits are provided for him with respect to his average annual compensation in excess of the plan's integration level applicable to him does not exceed 2 percent for each year of service.

(g) Normal retirement age is not lower than age 65 for men and not lower than age 60 for women.

(h) Benefits payable in case of retirement or severance of employment before normal retirement age cannot exceed the actuarial equivalent of that proportion of the maximum normal retirement benefits, which might be provided in accord-

ance with (a) through (g) of this subdivision, earned to the date of actual retirement or severance where such proportion is determined by the ratio that the actual number of years of service of the employee at retirement or severance bears to the total number of years of service he would have had if he had remained in service until normal retirement age.

(iii) (a) If a plan was properly integrated with old-age and survivors insurance benefits on July 5, 1968 (hereinafter referred to as an "existing plan"), then, notwithstanding the fact that such plan does not satisfy the requirements of subdivision (ii) of this subparagraph, it will continue to be considered properly integrated with such benefits until January 1, 1972. Such plan will be considered properly integrated after December 31, 1971, so long as the benefits provided under the plan for each employee equal the sum of—

(1) The benefits to which he would be entitled under a plan which, on July 5, 1968, would have been considered properly integrated with old-age and survivors insurance benefits and under which benefits are provided at the same (or a lesser) rate with respect to the same portion of compensation with respect to which benefits are provided under the existing plan, multiplied by the percentage of his total service with the employer performed before a specified date not later than January 1, 1972; and

(2) The benefits to which he would be entitled under a plan satisfying the requirements of subdivision (ii) of this subparagraph, multiplied by the percentage of his total service with the employer performed on and after such specified date.

(b) A plan which, on July 5, 1968, was properly integrated with old-age and survivors insurance benefits will not be considered not to be properly integrated with such benefits thereafter merely because such plan provides a minimum benefit for each employee (other than an employee who owns, directly or indirectly, stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the employer corporation) equal to the benefit to which he would be entitled under the plan as in effect on July 5, 1968, if he continued to earn annually until retirement the same amount of compensation as he earned in 1967.

(iv) (a) For purposes of this subparagraph, an employee's covered compensation is the amount of compensation with respect to which old-age and survivors insurance benefits would be provided for him under the Social Security Act (as in effect at any uniformly applicable date) if for each year until he reaches age 65 his annual compensation is at least equal to the maximum amount of earnings subject to tax in each such year under the Federal Insurance Contributions Act. An employee's covered compensation may be determined on the basis of age brackets provided in this subdivision.

(b) The age brackets referred to in (a) of this subdivision under the Social Security Act as amended by the Social Security Amendments of 1967 are as follows:

If the employee reaches age 65—	His covered compensation is—
Before 1969	\$4,800
After 1968 but before 1972	5,400
After 1971 but before 1979	6,000
After 1978 but before 1994	6,600
After 1993 but before 2001	7,200
After 2000	7,800

(v) In the case of an integrated plan providing benefits different from those described in subdivision (ii) or (iii) (whichever is applicable) of this subparagraph, or providing benefits related to years of service, or providing benefits purchasable by stated employer contributions, or under the terms of which the employees contribute, or providing a combination of any of the foregoing variations, the plan will be considered to be properly integrated only if, as determined by the Commissioner, the benefits provided thereunder by employer contributions cannot exceed in value the benefits described in subdivision (ii) or (iii) (whichever is applicable) of this subparagraph. Similar principles will govern in determining whether a plan is properly integrated if participation therein is limited to employees earning in excess of amounts other than those specified in subdivision (iv) of this subparagraph, or if it bases benefits or contributions on compensation in excess of such amounts, or if it provides for an offset of benefits otherwise payable under the plan on account of old-age and survivors insurance benefits. Similar principles will govern in determining whether a profit-sharing or stock bonus plan is properly integrated with the Social Security Act.

PAR. 2. Paragraph (c) (2) (i) of § 1.401-11 is amended by revising the seventh and eighth sentences thereof and as so amended reads as follows:

§ 1.401-11 General rules relating to plans covering self-employed individuals.

(c) *Requirements as to coverage.* \* \* \* (2) (i) Section 401(a) (3) (B) provides that a plan may satisfy the coverage requirements for qualification if it covers such employees as qualify under a classification which is found not to discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. Section 401(a) (5) sets forth certain classifications that will not in themselves be considered discriminatory. Under such section, a classification which excludes all employees whose entire remuneration constitutes "wages" under section 3121(a) (1), will not be considered discriminatory merely because of such exclusion. Similarly, a plan which includes all employees will not be considered discriminatory solely because the contributions or benefits based on that part of their remuneration

which is excluded from "wages" under section 3121(a) (1) differ from the contributions or benefits based on that part of their remuneration which is not so excluded. However, in determining if a classification is discriminatory under section 401(a) (3) (B), consideration will be given to whether the total benefits resulting to each employee under the plan and under the Social Security Act, or under the Social Security Act only, establish an integrated and correlated retirement system satisfying the tests of section 401(a). A plan which covers self-employed individuals, none of whom is an owner-employee, may also be integrated with the contributions or benefits under the Social Security Act. In such a case, the portion of the earned income (as defined in section 401(c) (2)) of such an individual which does not exceed the maximum amount which may be treated as self-employment income under section 1402(b) (1), and which is derived from the trade or business with respect to which the plan is established, shall be treated as "wages" under section 3121(a) (1) subject to the tax imposed by section 3111 (relating to the tax on employers) for purposes of applying the rules of paragraph (e) (2) of § 1.401-3, relating to the determination of whether a plan is properly integrated. However, if the plan covers an owner-employee, the rules relating to the integration of the plan with the contributions or benefits under the Social Security Act contained in paragraph (h) of § 1.401-12 apply.

PAR. 3. Paragraph (h) (3) of § 1.401-12 is amended to read as follows:

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

(h) *Integration with social security.* \* \* \*

(3) If a plan covering an owner-employee satisfies the requirement of subparagraph (1) of this paragraph, and if the employer wishes to integrate such plan with the contributions or benefits under the Social Security Act, then—

(i) The employer contributions under the plan on behalf of any owner-employee shall be reduced by an amount determined by multiplying the earned income of such owner-employee which is derived from the trade or business with respect to which the plan is established and which does not exceed the maximum amount which may be treated as self-employment income under section 1402 (b) (1), by the rate of tax imposed under section 1401(a); and

(ii) The employer contributions under the plan on behalf of any employee other than an owner-employee may be reduced by an amount not in excess of the amount determined by multiplying the employee's wages under section 3121(a) (1) by the rate of tax imposed under section 3111(a). For purposes of this subdivision, the earned income of a self-employed individual which is derived from the trade or business with respect to which the plan is established and which is treated as self-employment income under

section 1402(b) (1), shall be treated as "wages" under section 3121(a) (1).

[F.R. Doc. 68-13721; Filed, Nov. 12, 1968, 8:48 a.m.]

## Title 49—TRANSPORTATION

### Chapter I—Department of Transportation

[Docket No. OPS-1]

#### PART 190—INTERIM MINIMUM FEDERAL SAFETY STANDARDS FOR THE TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE

This regulation establishes interim minimum Federal safety standards for gas pipeline facilities and the transportation of natural and other gas throughout the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481) which became effective August 12, 1968, provides as follows:

As soon as practicable but not later than 3 months after the enactment of this Act, the Secretary shall, by order, adopt as interim minimum Federal safety standards for pipeline facilities and the transportation of gas in each State the State standards regulating pipeline facilities and the transportation of gas within such State on the date of enactment of this Act. In any State in which no such standards are in effect, the Secretary shall, by order, establish interim Federal safety standards for pipeline facilities and the transportation of gas in such State which shall be such standards as are common to a majority of States having safety standards for the transportation of gas and pipeline facilities on such date. Interim standards shall remain in effect until amended or revoked pursuant to this section. Any State agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the interim standards provided for above become effective any such standards applicable to interstate transmission facilities.

In accordance with this requirement the Department of Transportation has obtained from each of the 50 States the District of Columbia, and Puerto Rico detailed information concerning the safety standards in each of these jurisdictions applicable to the transportation of gas by pipeline. In addition to numerous written and telephonic communications with the related State agencies, the Department held a meeting in Washington on October 2, 1968, to which both State and industry representatives were invited. At that meeting the Department outlined its plans with respect to the interim regulations and also with respect to the long range requirements imposed on it by the Natural Gas Pipeline Safety Act of 1968. A copy of the transcript of that

meeting is included in the docket containing this rule-making action and is available for public inspection at the Office of Pipeline Safety, Room 806B, 800 Independence Avenue SW., Washington, D.C.

*Interim Federal safety standards for States having no standards in effect on August 12, 1968.* Based on the examination of relevant materials submitted by those jurisdictions, the Department has determined that of the 52 jurisdictions covered by the Natural Gas Pipeline Safety Act of 1968, only three had no standards in effect on August 12, 1968, the effective date of the Act. In accordance with section 3(a) of the Act, quoted above, and after examination of the standards in effect in all other jurisdictions covered by the Act, the Department has ascertained that the standards "common to a majority of States having safety standards for the transportation of gas and pipeline facilities" on August 12, 1968, are the standards contained in the 1968 edition of the United States of America Standards Institute "Standard Code for Pressure Piping—Gas Transmission and Distribution Piping System—USAS B31.8" (hereinafter referred to as USAS B31.8). Therefore, in accordance with section 3(a) of the Act, quoted above, section 4 of the regulation adopts that code as the interim minimum Federal safety standard for pipeline facilities and the transportation of gas within the States of Nebraska and South Dakota and the Commonwealth of Puerto Rico.

*Interim Federal safety standards for States having standards in effect on August 12, 1968.* As previously indicated, the Department has reviewed each State standard in effect on August 12, 1968, that applies to pipeline facilities and the transportation of gas. Most of the jurisdictions that have such standards in effect based their standards on the USAS B31.8 Code. Since a majority of the States adopted this code by incorporation by reference in a manner that automatically includes future changes, the majority are now using the 1968 edition of the Code.

While 49 of the 52 jurisdictions covered by the Natural Gas Pipeline Safety Act of 1968 had safety standards for "pipeline facilities" and the "transportation of gas" in effect on August 12, 1968, some of these State standards did not cover all of the facilities included within those terms as defined in the Act. For example, in many States the standards did not apply to interstate facilities and in some other States they did not apply to publicly owned facilities. The Department has concluded that the Congress did not intend that there would be any gaps in the applicability of the interim Federal safety standards even in those States in which the existing State standards, to be adopted as Federal standards, did not extend to interstate or publicly owned facilities. Both the Senate and House Committee Reports state that no vacuum should be permitted to exist during the period in which the Department is developing permanent standards. House

Committee Report No. 1390, 90th Cong., second sess., p. 20; Senate Committee Report 733, 90th Cong., first sess., p. 8. The Congress thereby intended that the standards to be adopted as interim Federal standards would extend to the full meaning of the words "transportation of gas" and "pipeline facilities" as they are defined in the Act so as to include interstate and publicly owned facilities and any other facilities that were not covered by existing State regulations. Therefore, in § 190.5 of the regulation the Department has, in adopting a State's standards that were in effect on August 12, 1968, applied those standards to all of the gas facilities within that State that fall within the terms "transportation of gas" and "pipeline facilities" as defined in the Act. For example, if a State had adopted the USAS B31.8 1968 edition as the State standard, except for interstate transmission facilities, the interim Federal standard adopted for all facilities in that State, including interstate transmission facilities would be the USAS B31.8 1968 edition. For another example, if a State had exempted municipally owned facilities from the coverage of its standards, the interim Federal standards would apply the existing State standards to the municipally owned facilities.

*Federal preemption: Interstate transmission facilities.* Section 3(a) of the Natural Gas Pipeline Safety Act of 1968 states that, after the adoption of interim Federal safety standards, a State "may not adopt or continue in force . . . any such standard applicable to interstate transmission facilities". This Federal preemption relates only to State "safety standards" and does not prevent a State from continuing in effect, with respect to interstate transmission facilities, those requirements that may have served an incidental safety purpose in addition to a bona fide State purpose such as zoning or planning. For example, a State requirement that maps of planned construction of interstate transmission facilities must be filed with a State agency before construction may be commenced would continue in effect after adoption of the interim Federal standards; the State would have authority to rescind or amend the requirement.

The Department of Transportation is not yet staffed to enforce the Federal standards applicable to interstate transmission facilities. To provide for enforcement, the Department intends to authorize the States to inspect and oversee those facilities. Since the certifications and agreements provided for in section 5 (a) and (b) of the Act do not apply to such interstate facilities, § 190.6 of the regulation authorizes each State that is willing to perform the service to act as the agent of the Department for this purpose. This action will necessarily be voluntary on the part of each State and, since no funds are presently available, will be on a nonreimbursable basis until appropriations are made for that purpose.

*State enforcement of interim Federal standards.* Paragraphs (a) and (b) of section 5 of the Natural Gas Pipeline

Safety Act of 1968 provide two means by which States may perform the major portion of the supervision and enforcement of the federally adopted standards, except with respect to interstate transmission facilities.

Paragraph (a) of section 5 of the Act provides that where a State agency (including a municipality) certifies that certain minimum criteria are met, the Federal standards shall not apply in that State to those facilities covered by the certification. These criteria, as stated in that section, are that the State agency—

- (1) Has regulatory jurisdiction over the safety standards and practices of such pipeline facilities and transportation of gas;
- (2) Has adopted each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this Act as of the date of the certification;
- (3) Is enforcing each such standard; and
- (4) Has the authority to require record maintenance, reporting, and inspection substantially the same as are provided under section 12 of the filing for of plans of inspection and maintenance described in section 11;

After August 12, 1970, the State agency must also certify "that the law of such State agency makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as are provided under sections 9 and 10" of the Act.

Paragraph (b) of section 5 of the Act provides a means for State agencies (including municipalities) to perform a large portion of the supervision and inspection of gas pipeline facilities subject to the Federal standards (except for the interstate transmission facilities) for which they are unable to submit a certification under paragraph (a). This is accomplished by agreement between the Department and the State agency (including a municipality) authorizing the State agency to—

- (1) Establish an adequate program for record maintenance reporting, and inspection designed to assist compliance with Federal safety standards;
- (2) Establish procedures for approval of plans of inspection and maintenance substantially the same as are required under section 11;
- (3) Implement a compliance program acceptable to the Secretary including provision for inspection of pipeline facilities used in such transportation of gas; and
- (4) Cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

Both the certification and agreement procedures described above are applicable to the interim minimum Federal standards. Therefore, the Department has prepared and distributed to the State agencies forms to be used in making the authorized certification or agreement. Because of the limited time available, these are necessarily interim procedures which will be reviewed and revised in the light of operating experience.

In a State which does not regulate gas utilities within municipalities and where

a municipality regulates privately owned gas utilities, the municipality is eligible to make certifications under section 5(a) or to enter into agreements with the Department under section 5(b). Whether or not a municipality that operates a gas utility that is not State regulated will be able to take advantage of either of these methods of local implementation under section 5 will depend on an examination, in each case, of the extent to which the municipal officials who establish and enforce the applicable standards conduct these activities independently of the municipal officials who operate the utility. The Department intends in the near future to publish for public comment criteria for determining the circumstances under which a particular municipality that operates a gas utility may be eligible under sections 5 (a) and (b) of the Act.

**Permanent Federal standards to replace interim standards.** Section 3(b) of the Natural Gas Pipeline Safety Act of 1968 provides that "not later than twenty-four months after the enactment of this Act, and from time to time thereafter, the Secretary shall, by order, establish minimum Federal safety standards for the transportation of gas and pipeline facilities". Section 3(b) further provides that "Such standards may apply to the design, installation, inspection, testing, construction, extension, operations, replacement, and maintenance of pipeline facilities."

From our work to date, it is clear that the construction of a completely new set of standards to cover the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities, would take at least the allotted 2-year period. In the meantime the interim standards adopted by this amendment, amended if necessary to meet needs that may arise, would continue in effect. The Department realizes that as long as the interim standards are in effect, there can be substantial variation between the "Federal minimum safety standards" in two adjoining States and that these differences can exist with respect to interstate transmission lines traversing both States. To avoid the continuation of such an anomalous situation, the Department is considering the immediate establishment of USAS B31.8 as the Federal minimum standards under paragraph (b) of section 3 of the Act. This would achieve a uniform Federal code in less time than will be needed to establish the long range design and construction standards that both the Congress and this Department envision. While any proposal along these lines will be issued as a notice of proposed rule making for public comment before any final action, the Department would be interested at this time in any advance comments on this possible procedure.

In view of the requirement of section 3(a) of the Act that the Department adopt interim Federal standards not later than 3 months after the enactment of the Act, that the interim standards be those in effect on August 12, 1968, or

for States having no standards those common to a majority of the States, and since the adoption of these standards does not involve the exercise of discretion, notice and public procedure on this regulation are impractical and are not required. However, the Department has the authority under section 3(a) to amend these interim standards and would of course take any action shown to be necessary by interested commenters. Therefore, interested persons may submit written comments which should identify the docket number, to the Department of Transportation, Office of Pipeline Safety, 800 Independence Avenue SW., Washington, D.C. 20590.

In consideration of the foregoing, effective December 12, 1968, the interim minimum Federal safety standards for the transportation of natural and other gas are hereby adopted as set forth below.

This regulation is adopted under the authority of the Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481), Part 1 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 1), and the delegation of authority to the Director, Office of Pipeline Safety, dated November 6, 1968 (33 F.R. 16448).

Issued in Washington, D.C., on November 7, 1968.

W. C. JENNINGS,  
Acting Director,  
Office of Pipeline Safety.

Sec.	Scope.
190.1	Definitions.
190.2	Matter incorporated by reference.
190.3	Interim minimum Federal safety standards for States in which no standards were in effect on August 12, 1968.
190.4	Interim minimum Federal safety standards for pipeline facilities and the transportation of gas in States with standards in effect on August 12, 1968.
190.5	Action by States as agents of the Department of Transportation with respect to interstate transmission facilities.
190.6	

**AUTHORITY:** The provisions of this Part 190 issued under sec. 3(a) of Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481).

#### § 190.1 Scope.

Pursuant to section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481) this part establishes interim minimum Federal safety standards for pipeline facilities, and the transportation of gas throughout the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### § 190.2 Definitions.

As used in this part—

(a) "Person" means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

(b) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;

(c) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce; except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary defines as a nonrural area;

(d) "Pipeline facilities" includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation;

(e) "State" includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

(f) "Municipality" means a city, county, or any other political subdivision of a State;

(g) "Interstate transmission facilities" means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act;

(h) "Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned; and

(i) "USAS B31.8" means the United States of America Standard Code for Pressure Piping—Gas Transmission and Distribution Piping System published by the American Society of Mechanical Engineers.

#### § 190.3 Matter incorporated by reference.

(a) **Incorporation.** There are hereby incorporated, by reference, into this part, the standards described and identified in §§ 190.4 and 190.5. These standards are thereby made part of this part. Standards subject to change are incorporated as they are in effect on August 12, 1968.

(b) **Availability.** The standards incorporated into this part by reference are available as set forth below. In addition all incorporated standards are available for inspection in the Office of Pipeline Safety, Department of Transportation, Room 806B, 800 Independence Avenue SW., Washington, D.C.

(1) USAS Standard Code for Pressure Piping—Gas Transmission and Distribution Piping Systems—B31.8—United States of America Standards Institute, 10 East 40th Street, New York, N.Y. 10016.

(2) State codes incorporated by reference at the addresses shown in § 190.5(c).

#### § 190.4 Interim minimum Federal safety standards for States in which no standards were in effect on August 12, 1968.

(a) Section 3(a) of the Natural Gas Pipeline Safety Act of 1968 requires the establishment as interim minimum Federal safety standards for pipeline facilities and the transportation of gas, in each State in which no such standards were in effect on August 12, 1968, standards

as are common to a majority of States having safety standards.

(b) Based on a review of the standards in the jurisdictions having such standards in effect on August 12, 1968, it is found that the standards common to a majority of the States having standards are the standards contained in the 1968 edition of the USAS B31.8.

(c) In accordance therewith, the interim minimum Federal safety standards for pipeline facilities and the transportation of gas in the States of Nebraska and South Dakota and the Commonwealth of Puerto Rico are the standards set forth in the 1968 edition of the USAS B31.8.

**§ 190.5 Interim minimum Federal safety standards for pipeline facilities and the transportation of gas in States with standards in effect on August 12, 1968.**

(a) Section 3(a) of the Natural Gas Pipeline Safety Act of 1968 requires the Secretary to adopt as interim minimum safety standards for pipeline facilities and the transportation of gas in States with standards in effect on August 12, 1968, the State standards in effect on that date.

(b) In accordance with paragraph (a) of this section, the interim minimum Federal safety standards for pipeline facilities and the transportation of gas for the States and the District of Columbia listed in paragraph (c) of this section are those portions of the standards set forth in the document referenced following the name of that jurisdiction that are safety standards relating to the transportation of gas and pipeline facilities, as in effect on August 12, 1968. The incorporation by reference in this section of a regulation includes both the substantive and the procedural requirements of that regulation. Notwithstanding any exceptions (whether geographic, relating to kinds of facilities covered, or otherwise) contained in a regulation incorporated by reference in this section, the minimum Federal safety standards adopted apply as Federal standards to all pipeline facilities and to all transportation of gas in that State.

(c) The State standards incorporated by reference are:

Alabama—Commission Docket 15957—Special Gas Rules and Informal Docket U-2222. Alabama Public Service Commission, Post Office Box 991, State Office Building, Montgomery, Ala. 36102.

Alaska—Chapter 95—Gas Utility Safety Regulations. Alaska Public Service Commission, 700 Mackay Building, 338 Denali Street, Anchorage, Alaska 99501.

Arizona—General Order U-47. Arizona Corporation Commission State Capitol Annex, Phoenix, Ariz. 85007.

Arkansas—Arkansas Gas Pipeline Code as adopted in Administrative Order on April 11, 1967.

Public Service Commission, Justice Building, Little Rock, Ark. 72201.

California—General Order No. 94-A—Rules Governing the Design, Construction, Operation, Maintenance, and Inspection of Gas Holders and Liquid Hydrocarbon Vessels.

General Order No. 112-B—Rules Governing Design, Construction, Testing, Maintenance, and Operation of California Utility Gas Transmission and Distribution Systems.

Public Utilities Commission, State of California, California State Building, San Francisco, Calif. 94102.

Colorado—Rules 4, 18, and 24 of Rules Regulating the Service of Gas Utilities, Public Utilities Commission of the State of Colorado Case No. 5321, Decision No. 68570.

Public Utilities Commission, State of Colorado, 1845 Sherman Street, Denver, Colo. 80203.

Connecticut—Docket No. 8950, sections 1.01 through 2.03, 3.05, 3.06, and 6.01 through 7.06 of Gas Distribution Companies Rules, Regulations and Standards and, Docket 10050—Regulations for High Pressure Natural Gas Transmission Pipelines.

Public Utilities Commission, State Office Building, 165 Capitol Avenue, Hartford, Conn. 06115.

Delaware—PSC Docket No. 496, Order No. 890.

The Public Service Commission, Old State House, Dover, Del. 19901.

Florida—Chapter 310-12 of the Rules of Florida Public Service Commission, as amended by Emergency Order No. 4369, Docket No. 5563.

Florida Public Service Commission, 700 South Adams Street, Tallahassee, Fla. 32304.

Georgia—Nondocket Order Dated April 23, 1968. In Re: Rules and Regulations for the Safe Installation and Operation of Natural Gas Transmission and Distribution Facilities.

Georgia Public Service Commission, 244 Washington Street SW., Atlanta, Ga. 30334.

Hawaii—Standards for Gas Service, Calorimetry, Holders and Vessels—General Order No. 9, Chapter I, Parts I, II, V, VIII, and Chapter III.

Public Utilities Commission, Department of Regulatory Agencies, Post Office Box 541, Honolulu, Hawaii 96809.

Idaho—Safety Regulations and Service Standards, Sections I through III; General Order No. 98 issued August 1, 1955, as amended.

Idaho Public Utilities Commission, Statehouse, Boise, Idaho 83707.

Illinois—General Order No. 43—Rules Governing Reports of Accidents by Public Utilities Other Than Railroads and Street Railroads; General Order No. 185, Rules Relating to Underground Public Utility Facilities; and General Order No. 192, Revised, Rules for the Construction and Operation of Gas Transmission and Distribution Piping Systems.

Illinois Commerce Commission, 401 South Spring Street, Springfield, Ill. 62706.

Indiana—Rules 1 through 5, 22, and 24 of the Rules and Standards of Service for the Gas Public Utilities of Indiana.

Public Service Commission, 901 State Office Building, Indianapolis, Ind. 46204.

Iowa—Iowa Departmental Rules (1966), Rule PL 94, and 103 through 109.

Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50310.

Kansas—Sections 1, 2, and 7 and so much of section 8 as applies to section 7 of the Rules and Regulations Relating to Standards of Quality, Pressure, Accuracy of Measurement, Safety and Service of Natural Gas in the State of Kansas, Docket 34, 856-U.

State Corporation Commission, State Office Building, Fourth Floor, Topeka, Kans. 66612.

Kentucky—Rules I through III and VI of PSC: Gas-1 and Rules I through VI of PSC: Gas, SP-1.

Legislative Research Commission, Frankfort, Ky. 40601.

Louisiana—Resolution of the Louisiana Public Service Commission relating to uniform Safety Standards for Pipeline Facilities and Transportation, Distribution, and Storage of Gas dated February 14, 1968.

Louisiana Public Service Commission, Post Office Box 44035, Baton Rouge, La. 70804.

Maine—Maine Public Utilities Commission General Order No. 27.

Public Utilities Commission, Augusta, Maine 04330.

Maryland—Sections 101 through 203, 501 through 504, and 801 through 807 of the Public Service Commission of Maryland Regulations Governing Service Supplied by Gas Companies, Case 5905.

Public Service Commission, Engineering Department, 301 West Preston Street, Baltimore, Md. 21201.

Massachusetts—D.P.U. 12769, June 21, 1960, D.P.U. 9734-B, January 23, 1963, D.P.U. 11725-C, February 15, 1967, D.P.U. 11725-D, July 31, 1968.

Massachusetts Department of Public Utilities, Engineering Division, 100 Cambridge Street, Boston, Mass. 02202.

Michigan—Michigan Administrative Code, R460.2804 through R460.2879.

Michigan Public Service Commission, Fifth Floor, Lewis Cass Building, Lansing, Mich. 48913.

Minnesota—Section (b) (6) of the Liquefied Petroleum Gas Code.

State of Minnesota, Fire Marshall Department, St. Paul, Minn. 55101.

Mississippi—Mississippi Public Service Commission Order U-1416, dated August 31, 1967.

Mississippi Public Service Commission, 1105 Woolfolk Building, Post Office Box 1174, Jackson, Miss. 39201.

Missouri—Public Service Commission General Order No. 45.

Missouri Public Service Commission, 100 East Capitol Avenue, Jefferson City, Mo. 65101.

Montana—Rules and Regulations for Implementation of USASI B31.8 Code adopted February 28, 1968, effective March 15, 1968. Public Service Commission of Montana, Helena, Mont. 59601.

Nevada—Supplemental Order, Case No. 1269.2, September 9, 1963.

Public Service Commission of Nevada, Nye Building, Carson City, Nev. 89701.

New Hampshire—Sections I, II, and VI through VIII of the "Rules and Regulations Prescribing Standards for Gas Utilities".

Public Utilities Commission, Concord, N.H. 03301.

New Jersey—Board of Public Utility Commissioners Administrative Order 14:295. State of New Jersey, Department of Public Utilities, Board of Public Utilities, Regulations, Chapter IV, Sections 14:442-1, 14:442-1a, 14:442-2a, 14:443-4, 4a, 4b, and 4c.

Board of Public Utility Commissioners, 1100 Raymond Boulevard, Newark, N.J. 07102.

New Mexico—Rules and Regulations of the Corporation Commission of the State of New Mexico Relating to Gas Pipelines.

New Mexico Public Service Commission, State Capitol Building, Santa Fe, N. Mex. 87501.

New York—Parts 255, 256, and 257 of Title 16 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

Public Service Commission, 44 Holland Avenue, Albany, N.Y. 12208.

North Carolina—Articles 1, 2, 5, and 8 of Chapter 6 of the Rules and Regulations of the North Carolina Utilities Commission. Utilities Commission, Box 991, Raleigh, N.C. 27602.

North Dakota—Public Service Commission Gas Piping Safety Code adopted February 13, 1968.

Public Service Commission, State Capitol Building, Bismarck, N. Dak. 58501.

Ohio—Administrative Order No. 200 Revised. Public Utilities Commission of Ohio, 111 North High Street, Columbus, Ohio 43215.

Oklahoma—Cause No. 23643, Order No. 66094. Corporation Commission of Oklahoma, Jim Thorpe Office Building, Oklahoma City, Okla. 73105.

Oregon—Oregon Public Utility Commissioners, 1968, Division II, Rules and Regulations 24-005 through 24-015, and 24-340 through 24-400.

Secretary of State, 121 State Capitol, Salem, Oreg. 97310.

Pennsylvania—Section 201, and Rules 1, 21, 23, 24, and 25 of section 202 of the Pennsylvania Public Utility Commission Gas Regulations.

Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pa. 17120.

Rhode Island—Sections 20 through 28 of the Rules and Regulations Prescribing Standards for Gas Utilities.

Department of Business Regulation, Division of Public Utilities, 49 Westminster Street, Providence, R.I. 02903.

South Carolina—The Rules and Regulations Governing the Operation of Gas Utilities in South Carolina, except sections 301 through 406, sections 601 through 609.

The Public Service Commission of South Carolina, 328 Wade Hampton Office Building, Columbia, S.C. 29201.

Tennessee—Tennessee Public Service Commission Rule 57: Adoption of American Standard Code for Pressure Piping, Gas Transmission and Distribution Systems.

Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219.

Texas—Gas Utility Docket No. 377. Gas Utilities Division, Railroad Commission of Texas, Box EE, Capitol Station, Austin, Tex. 78711.

Utah—Sections 1.01 through 1.08, 2.02, 3.05, and 6.01 through 7.05 of General Order No. 70 of the Public Service Commission of Utah.

Public Service Commission of Utah, 330 East Fourth South Street, Salt Lake City, Utah 84111.

Vermont—General Order No. 41, Rules and Regulations Applicable to Construction and Operation of Gas Transmission Pipelines.

General Order No. 42, Rules and Regulations Applicable to Construction and Operation of Gas Distribution Systems. Section 16, 25, 26, and 27 of General Order No. 43, Rules and Regulations Prescribing Standards for Gas Utilities.

State of Vermont, Public Service Board, 7 School Street, Montpelier, Vt. 05602.

Virginia—Orders issued by the Virginia State Corporation Commission in Case No. 18151.

State Corporation Commission, Engineering Division, Box 1197, Richmond, Va. 23209.

Washington—Washington Utilities and Transportation Commission's Rules and Regulations Pertaining to Matters of Public Safety in the Construction and Operation of Facilities for the Transmission and Distribution of Gas.

Washington Utilities and Transportation Commission, Insurance Building, Olympia, Wash. 98501.

West Virginia—Rules 8, 9, 10, 45, and 46 of the West Virginia Public Service Commission's Rules and Regulations for the Government of Gas Utilities.

West Virginia Public Service Commission, Charleston, W. Va. 25305.

Wisconsin—Chapter PSC 135, Wisconsin Administrative Code. Department of Administration, Document Sales, Room B243, 1 West Wilson Street, Madison, Wis. 53702.

Wyoming—Rules 44 and 64.1 of Part III of the Rules of the Public Service Commission of Wyoming.

State of Wyoming, Public Service Commission, Cheyenne, Wyo. 82001.

District of Columbia—Code of Rules and Regulations for the Construction and Maintenance of Gas Pipelines in the District of Columbia—P.S.C. No. G.A.-13. Public Service Commission, District of Columbia, Room 204 1625 Eye Street NW, Washington, D.C. 20006.

**§ 190.6 Action by States as agents of the Department of Transportation with respect to interstate transmission facilities.**

(a) Any State agency of any State having authority, under the laws of that State, to exercise safety jurisdiction over interstate transmission facilities and that desires to exercise that authority as an agent of the Secretary of Transportation, is hereby authorized to do so. Each State agency exercising that authority shall notify the Director, Office of Pipeline Safety, in writing, of its intention to exercise that authority.

(b) Whenever a State procedural requirement incorporated under § 190.5 would require, with respect to interstate transmission facilities, the submission of any plans or other data to a State agency that requirement continues in effect and that State agency is to act as an agent of the Department under paragraph (a) of this section in receiving those documents.

Incorporation by reference provisions approved by the Director of the Federal Register on November 12, 1968.

[F.R. Doc. 68-13689; Filed, Nov. 12, 1968; 8:48 a.m.]

# Proposed Rule Making

## DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1030, 1047, 1049]

[Docket Nos. AO-319-A14, AO-33-A39,  
AO-361-A1]

### MILK IN INDIANAPOLIS, IND., FORT WAYNE, IND., AND CHICAGO REGIONAL MARKETING AREAS

#### Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Indianapolis, Ind., Fort Wayne, Ind., and Chicago Regional marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

#### PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Indianapolis, Ind., on July 29 and 30, 1968, pursuant to notices thereof which were issued July 13, 1968 (33 F.R. 10104), and July 19, 1968 (33 F.R. 10346).

The material issues on the record of the hearing relate to:

1. Merger of the Fort Wayne, Ind., order into the Indianapolis, Ind., order and inclusion in the regulated marketing area of certain additional Indiana counties regulated under the Chicago Regional order and certain other Indiana counties not currently under regulation:

- (a) Interstate commerce.
- (b) Need for such merger and expansion of the Indianapolis marketing area.

2. Class I price level and differentials for butterfat and location.

3. Revision of "producer milk" definition with respect to diversions of milk and point of pricing for diverted milk.

4. Miscellaneous administrative and conforming changes:

- (a) Definitions of "producer," "route," and "fluid milk product."

- (b) Plant requirements for pooling.

- (c) Interplant transfers and diversions.

- (d) Application of seasonal incentive (Louisville) plan.

- (e) Other administrative provisions.

#### FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Merger of the Fort Wayne, Ind., order with the Indianapolis, Ind., order and further expansion of the combined marketing area to include certain unregulated Indiana counties and eight Indiana counties presently included in the Chicago Regional order.

The expanded marketing area covered by the consolidated order should be designated the "Indiana marketing area". CFR Part 1047 of Title 7 (Fort Wayne, Ind., Order No. 47) would be superseded thereby.

- (a) *Interstate commerce.* Milk handling in the proposed Indiana marketing area is in the current of interstate commerce and directly burdens, obstructs, or affects interstate commerce in milk and its products.

There is substantial competition for route sales of fluid milk products not only among handlers to be regulated by the proposed Indiana order (as further described below), but also between them and the handlers under orders for areas outside Indiana. Some route distribution is made in various parts of the proposed marketing area by handlers regulated under several orders, including the Greater Cincinnati, Louisville-Lexington-Evansville, Miami Valley, Southern Michigan, Southern Illinois, Chicago Regional and Columbus, Ohio, orders. Conversely, fluid milk products processed in plants located in the proposed marketing area move into other Federal order marketing areas such as Southern Michigan, Columbus, Greater Cincinnati, Louisville-Lexington-Evansville, Central Illinois, Chicago Regional, and Southern Illinois. These orders cover areas in the States of Michigan, Ohio, Indiana, Illinois, Wisconsin, and Kentucky. Milk used for fluid milk and milk products under each of the above orders has been found to be in the current of, and to burden or affect, interstate commerce in milk and its products.

One handler, presently regulated under the Indianapolis order, operates a pool distributing plant at Greenville,

Ohio. Milk from farms in Ohio and Indiana is processed and packaged at such plant for distribution in the proposed Indiana marketing area in competition with Indiana handlers. This handler also distributes milk in Ohio in competition with handlers from several of the above markets.

Milk from farms in Wisconsin, Michigan, Ohio, and Illinois is transported regularly across State lines to be commingled and processed at plants of Indiana handlers and that of the single Ohio handler, who would be regulated under the expanded order.

Milk in excess of fluid milk requirements at plants to be regulated is manufactured into various dairy products, particularly butter and nonfat dry milk. Much of such milk is moved to the plants of two of the proponent cooperatives which are located at Dayton, Ohio, and Fort Wayne, Ind., mainly for manufacture into nonfat dry milk. The remaining reserve milk is processed at other plants in Indiana, Ohio, and Wisconsin. These products, manufactured from producer milk, are shipped to a number of markets outside Indiana, where they compete on the national market with products manufactured in other states.

- (b) *Basis for expanding Indianapolis marketing area.* The Indianapolis order should be expanded to regulate (1) the marketing area now under the Fort Wayne order, (2) certain Indiana counties (formerly known as the Northwestern Indiana marketing area) regulated since July 1, 1968, under the Chicago Regional order, and (3) six Indiana counties (Cass, Fulton, Warren, Fountain, Parke, and Vermillion) not now under any regulatory program of this type. The expanded market should be renamed the "Indiana marketing area."

Six cooperatives representing a substantial majority of the producers in the Indianapolis, Fort Wayne, and former Northwestern Indiana markets proposed combining the above-named regulated areas and 10 unregulated counties (Benton, Cass, Fountain, Fulton, Jasper, Newton, Parke, Pulaski, Warren, and Vermillion) under a single order. Representatives of virtually all handlers in the State of Indiana supported the proposed single order.

Proponent cooperatives contended that unless a single order for the proposed Indiana marketing area is adopted, many handlers in Northwestern Indiana will be unable to compete in distribution or in maintaining producer supplies. They testified further that a single order would (1) eliminate marketing problems resulting from the increasing penetration of individual handler sales routes from one market into another in Indiana, and (2) facilitate efficiencies in the handling of

supplies to meet the changing daily requirements of handlers throughout the State.

Representatives of three cooperatives associated primarily with the Chicago Regional market appeared in opposition to removal of the eighth Northwestern Indiana counties from regulation under the Chicago Regional order. One cooperative was opposed to removal on the grounds that (1) since these counties were included in the Chicago Regional market only recently, they should not so soon be removed unless other areas likewise recently incorporated into the latter market are considered for removal, (2) the Northwestern Indiana handlers rely on the Chicago market to furnish their needs for supplemental milk, (3) Chicago order milk is distributed on routes in such Indiana counties, and (4) removal of such counties would increase the difficulty of Wisconsin supply plants to qualify for pooling under the Chicago Regional order. The other cooperatives were opposed to removal of such eight counties from the Chicago Regional order on the basis that there would be a sales loss to the Chicago order pool.

The primary purpose of a Federal milk marketing order is to promote orderly marketing conditions throughout a "market" by implementing a system of classified pricing and establishing a means by which producers supplying the particular market may share uniformly in the proceeds from the sale of their milk. With this general objective in mind, Federal milk orders were made effective many years ago in the Indianapolis, Fort Wayne, and Northwestern Indiana marketing areas. The Indianapolis and Fort Wayne orders continue to operate as separate regulations. The Northwestern Indiana order was merged, however, into the newly established Chicago Regional market order on July 1, 1968.

In recent years, a number of major technical and economic developments have taken place with respect to the marketing of fluid milk in Indiana, causing an intensification of competition both in procurement and distribution among the State's principal fluid milk markets. This has been brought about by such factors as: Improved mobility of milk, increasing concentration of fluid milk processing, greater need for closer working relationships among cooperatives, greater overlapping of market milksheds, uniform health requirements throughout the State, and increased competition among markets for large wholesale accounts.

As a consequence, handlers have extended milk routes substantially, enlarging the area where a closely interrelated group of buyers and sellers operate and tending to erode individual market boundaries as historically set. The Indiana markets thus are taking on a broad geographical rather than local character and require application of the same form of regulation over a wider territory to insure the continuance of orderly, efficient marketing under the new conditions.

As individual markets grow through expansion of sales distribution areas for

Class I milk and the need to draw milk from wider production areas increases, even the question of what larger area constitutes the relevant market becomes more complicated. Under today's conditions, regular long-distance shipments of milk between markets are common and few markets in the nation are separate in all respect from other markets.

This is particularly so in Indiana where, as previously indicated, the markets are in constant relationship in both distribution and supply not only with each other but also with other markets in neighboring States. Yet there are economic characteristics and local factors which suggest a highly homogeneous marketing situation in Indiana reasonably distinguishable from other market situations and therefore point to a particular form and scope of regulation.

The counties to be included in the proposed Indiana marketing area under a consolidated order should be determined primarily by conditions affecting competition in distribution for the major suppliers serving such area. The presence of uniform quality and sanitation requirements and the intensity of competition among handlers within the above areas in relation to the degrees of competition offered by handlers from other Federal orders assist in defining the area which should be covered.

The two regulated marketing areas of Fort Wayne and Indianapolis abut each other. Over time, handlers in each area have broadened their spheres of distribution so that now routes from each area penetrate substantially into the other. Sales in the present Indianapolis and Fort Wayne marketing areas (46 Indiana counties) are made from widely dispersed plants operated by 32 handlers regulated under the two orders. A recent Purdue University survey of such intermarket distribution was submitted in testimony. This survey disclosed that Fort Wayne handlers distribute milk in eight counties of the present Indianapolis marketing area: Delaware, Grant, Henry, Madison, Miami, Randolph, Tipton, and Wayne. Indianapolis handlers distribute milk in four counties of the Fort Wayne marketing area: Blackford, Huntington, Jay, and Wabash. In Blackford and Jay counties, Indianapolis handlers account for about 61 and 76 percent, respectively, of the fluid milk sales in such counties.

Class I sales made in each of the 46 counties by the Fort Wayne and Indianapolis handlers, plus the sales therein by handlers from Northwestern Indiana, substantially exceed those made by distributors from other markets. For example, sales by handlers in Indiana represent between 91.8 and 100 percent of total county sales in each of the 46 counties.

The intimate marketing relationship between the Indianapolis and Fort Wayne areas is illustrated also by the fact that the bulk of producer milk supplies of the handlers in both markets are procured from a common production area in Indiana and nearby Ohio. One Fort Wayne cooperative regularly supplies member milk to a handler in the Indianapolis market as well as to han-

dlers in the Fort Wayne market. This cooperative operates a plant at Fort Wayne, which is a major outlet for reserve milk in excess of the fluid milk requirements of Indianapolis and Fort Wayne handlers. The principal cooperative in the Indianapolis market has producer members delivering to the Fort Wayne market.

The gain or loss of a large account by a handler in either market can cause the handler's plant to be transferred to the other market for the purpose of regulation. This affects his producers in that they also are transferred to the other market. The switching of individual plants on this basis for temporary periods can substantially improve the blend price for producers in the market gaining the account and have an opposite effect on the producers in the market losing the account. Significant seasonal variations in blended prices between the two markets also occur and cause "order-jumping" by some producers. Since the two markets are in close competition for milk supplies as well as in distribution, significant temporary changes in blend price relationships in either direction are disruptive to procurement practices and cause dissatisfaction among producers.

Adoption of the same regulatory program for both markets will provide a constant price relationship between the two and also assist the cooperatives in both markets in their joint efforts to improve efficiency in servicing all handlers with their fluid needs and in disposing of daily and seasonal reserves not needed in bottling plants. Combining these areas thus will help promote a more stable marketing situation for producers in both markets.

Handlers in both markets supported the producers' proposal to include the Fort Wayne market under the same regulatory program as Indianapolis.

The six unregulated counties of Fulton, Cass, Warren, Fountain, Parke, and Vermillion appropriately should be included in the expanded marketing area.

Producers proposed to include in the expanded marketing area such six Indiana counties plus four other unregulated counties. The 10 counties they proposed are: Fulton, Cass, Pulaski, Jasper, Newton, Benton, Warren, Fountain, Parke, and Vermillion.

The problems of distribution and procurement which prevail in the six counties included are highly similar to those of the Indianapolis market. In Cass County, Indianapolis handlers distribute 83 percent of the county's total sales. The remaining 17 percent of sales in this county are made by Northwestern Indiana handlers.

Two local distributors with plants in Cass County have been both partially regulated and regulated handlers under the Indianapolis and Northwestern Indiana orders at various times, and at other times have been in an unregulated status. This has caused them difficult procurement problems. One of these handlers requested that he be placed under full regulation in order that his producers might be on the same pricing basis as producers of the Indianapolis regulated

handlers with whom he competes for fluid sales and a milk supply.

Indianapolis handlers distribute 64 percent of the total sales in Fountain County, with Northwestern Indiana handlers accounting for the remaining 36 percent. In Parke County, Indianapolis handlers distribute 72 percent of total sales, with the remaining 28 percent by Northwestern Indiana handlers. In Vermillion and Warren Counties, all sales are made by Indianapolis handlers.

The largest of the handlers formerly regulated by the Northwestern Indiana order (now a part of the Chicago Regional order) has his plant in Fulton County. It is the only plant located in this rural county. The Fulton County handler indicated on the record his intention to transfer his plant to regulation under the Indianapolis order and, effective August 1, 1968, this handler did become subject to the Indianapolis order. In this connection official notice is taken of the Indianapolis market administrator's "Official Announcement of the Uniform Price for the Indianapolis, Ind., Marketing Area for August 1968."

Fluid milk sales in Fulton County are made not only by this handler but also by handlers from the Indianapolis, Northwestern Indiana, and Chicago Regional orders. Handlers formerly under the Northwestern Indiana order, including the handler with the Fulton County plant, distribute 53 percent of the total sales; Indianapolis handlers, 2 percent; and Chicago Regional handlers, 45 percent. The sales made by Chicago Regional handlers in this county are, however, only about 3 percent of their aggregate sales in the State of Indiana.

The inclusion of such six unregulated counties is appropriate to extend the uniform price plan to an area primarily served by handlers from Indianapolis and Northwestern Indiana. However, the remaining four unregulated Indiana counties of Benton, Jasper, Newton, and Pulaski proposed for regulation should not be included in the Indiana marketing area.

The majority of the distribution in three of these four rural counties is by Chicago regulated handlers. Chicago handlers distribute about 63 percent of the sales in Newton County, 81 percent in Jasper County, and 58 percent in Pulaski County. There is no record evidence to indicate the identity or location of distributors serving Benton County. The bulk of the remaining sales are made by handlers from Northwestern Indiana. Indianapolis handlers have no distribution in Newton County and only minor sales in Jasper and Pulaski Counties. In addition, there was no indication in the record of unregulated distribution in any of the four counties which would seriously affect or disturb the marketing of milk to be regulated by the expanded order.

Producers proposed further that the expanded marketing area include the eight counties in northwestern Indiana formerly known as the "Northwestern Indiana marketing area," now in the Chicago Regional marketing area. It consists of the eight Indiana counties of

Lake, Porter, La Porte, Starke, Marshall, St. Joseph, Elkhart, and Kosciusko.

Because of its proximity to other regulated markets to the south, east, and west, the question of appropriate regulation of the Northwestern Indiana area has been the subject of considerable debate on two occasions. Such controversies culminated in removing three townships of Lake County ("Calumet area") from regulation under the former Chicago order on April 1, 1965, to be made part of the Northwestern Indiana marketing area and, more recently on July 1, 1968, in including all eight Northwestern Indiana counties under the new Chicago Regional order.

Both local companies serving these counties and representatives of 90 percent of the producers supplying them complain that because such counties were placed under the Chicago regional order on July 1, the local handlers have been placed in an impossible competitive position both in distribution and in the procurement of milk supplies. Proponents estimate that, as the result of being pooled under Order No. 30, the producers' blend price at such plants will decrease an average 20 cents per hundredweight compared to prices previously received under the separate Northwestern Indiana order. This would result in a difference exceeding 30 cents when comparison is made to minimum blend prices computed under the Fort Wayne and Indianapolis orders.

The present complaint of the producers and handlers involved closely parallels the basis on which the townships in Lake County were transferred to the Northwestern Indiana marketing area in 1965. They ask for regulation of this area on terms comparable to the Indianapolis and Fort Wayne markets on the basis of the high degree of similarity in marketing conditions among the three markets.

These eight counties should be removed from regulation under Order No. 30 and included in the proposed Indiana marketing area.

The counties in question are the northernmost counties in Indiana. The most populous segments of this area are Lake County, which is nearest Chicago and contains Gary and Hammond, and St. Joseph County which contains South Bend.

Class I sales in the eight Northwestern Indiana counties are made mainly by 15 handlers with plants in these counties, the handler with a plant in Fulton County, and by several handlers regulated under other Federal orders, including the Fort Wayne and Indianapolis orders, and Chicago-based handlers. For example, Indiana-based handlers, who would be regulated by the proposed Indiana order, distribute in the aggregate about 70 percent of the 30 million pounds of total Class I sales in the eight counties. The remaining 9 million pounds of sales in the eight-county area are made from other plants now under the Chicago Regional order and by a partially regulated handler at Niles, Mich. More specifically, Indiana handlers, including these under the Fort Wayne and Indian-

apolis orders, have the following percentages of county sales: 69 percent in Elkhart County; 56 percent in Kosciusko County; 64 percent in Lake County; 91 percent in La Porte County; 100 percent in Marshall County; 74 percent in Porter County; 52 percent in Starke County; and 91 percent in St. Joseph County.

In five of the counties—Elkhart, Kosciusko, Lake, Porter, and Starke—Chicago-based handlers distribute 31 percent, 45 percent, 36 percent, 26 percent, and 48 percent, respectively, of the county's Class I sales. Their sales in Lake County approximate 4 million pounds monthly and represent about half of all their milk sold in Indiana. The above percentages for the other counties represent relatively small amounts ranging from 300,000 to 600,000 pounds monthly per county. In the two other counties (La Porte and St. Joseph) Chicago handlers distribute less than 10 percent of the total sales.

Total route distribution from Chicago into all parts of Indiana amounts to less than 3 percent of the Class I sales of the Chicago market. While some Chicago order milk is distributed in a few counties of the Indianapolis marketing area, as well as in the Northwestern Indiana counties, in each such county the quantity is a di minimis portion of the county's needs. Chicago handlers have little route distribution in the Fort Wayne market.

Northwestern Indiana handlers, on the other hand, sell substantial quantities of milk in 21 of the 34 counties of the Indianapolis market and in 10 of the 12 counties of the Fort Wayne market. In the five counties of Montgomery, Miami, Vigo, Tippecanoe, and Tipton (Indianapolis area), Northwestern Indiana handlers distribute 28, 36, 36, 42, and 44 percent, respectively, of the total county sales. In the Fort Wayne market, Northwestern Indiana handlers have the following percentages of county sales: Steuben County, 21; Wells County, 36; De Kalb County, 37; Noble County, 44; La Grange County, 54; and Wabash County, 59. The percentages of total sales held in the four remaining counties vary from 5 to 19 percent. Little milk is distributed by Northwestern Indiana, Indianapolis, or Fort Wayne handlers westward beyond the Indiana State boundary.

The recent inclusion of the Northwestern Indiana market in the Chicago Regional order has caused major competitive problems for the 12 small local handlers. These handlers distribute amounts ranging from 225,000 to 1.5 million pounds of milk per month. While this market, like other markets in Indiana and Ohio, purchases occasional supplemental supplies of plant milk from Wisconsin or Minnesota, which milk sometimes is from plants now under the Chicago Regional order, they rely mainly on direct-ship milk from nearby farms which is procured in close competition with primary supplies for Fort Wayne, Indianapolis, and the Ohio markets of Cincinnati, Miami Valley and Northwestern Ohio.

The difficulty faced by the Northwestern handlers as the result of regulation

under the Chicago Regional order is the decrease in the uniform price to their producers. The average percentage of Class I utilization in Chicago order plants is significantly less than the average utilization of Northwestern Indiana plants. Consequently, their uniform prices under the Chicago Regional market will be lower than the uniform prices as computed under the former Northwestern Indiana order. Even with a location differential of plus 14 cents per hundredweight at South Bend under the new Chicago Regional order as compared to the price f.o.b. at Chicago, the uniform price at Northwestern Indiana plants is expected to average more than 30 cents below the prices received by Indiana producers shipping to Fort Wayne or Indianapolis.

There is no substitute supply of direct-ship milk within reasonable distance which is not also keenly sought by the Fort Wayne, Indianapolis, and nearby Ohio markets having higher uniform prices. Therefore, to maintain the local milk supplies while under the Chicago Regional order, the small Northwestern Indiana handlers must either make up such difference through payment of premiums over order blend prices, or purchase plant supplies of Wisconsin or Minnesota milk to replace the locally produced milk.

Actually, the latter alternative is not a practical one in view of the small size of these plants. Inquiries made by local handlers of long distance haulers have revealed the reluctance of haulers to move milk such distances in the small volumes needed, except at prohibitive expense to the purchaser. Thus, the additional cost of an alternative supply in this manner, if obtainable at all, would be as great or greater than the premiums necessary to hold local milk supplies. Either choice places such handlers in a noncompetitive position in their distribution and supply procurement.

Moreover, while the Fort Wayne and Indianapolis handlers are their main competition, these smaller handlers individually do not have sufficient proportions of their sales in the Fort Wayne or Indianapolis markets to qualify them for regulation in either market under any reasonable pooling standard. The two largest local handlers serving Northwestern Indiana are, however, in position to avoid the increased cost experienced by the smaller handlers even if no change in marketing areas is effected as the result of this hearing. As previously stated, one has already transferred his plant to the Indianapolis market as the result of inclusion of the Northwestern Indiana counties under the Chicago Regional order. The other, who has a large proportion of his business in the Fort Wayne market, announced his intention to transfer his plant to that market.

By making such transfers these two handlers can remain competitive in distribution and continue to procure milk supplies on comparable price terms with the competing Indianapolis, Fort Wayne and nearby Ohio markets. This will have the effect, however, of compounding fur-

ther the competitive difficulties in both distribution and procurement of the remaining smaller handlers in Northwestern Indiana unless the latter also are afforded a similar basis of regulation.

Obviously the Northwestern Indiana handlers are on the fringe of the Chicago supply and distribution system and are not in position to take advantage of the supply services of that market on a basis comparable to other handlers under the Chicago Regional order. They are not regulated in a way which insures a milk cost comparable with their main competition. They are in a different position in this regard than other Chicago Regional handlers who compete largely within a single milkshed (price area) where alternative supplies of milk are readily available without substantial increase in cost. While the continuation of uniform pricing among handlers in the Northwestern Indiana market is needed, the pricing plan should be one which provides the small local handlers a basis for selling and for procuring supplies comparable with their principal competition. Inclusion of the Northwestern Indiana counties in the Indiana marketing area will achieve this result.

After allowing for transfer of the two larger Northwestern Indiana plants which may be expected regardless of any amendment action (and would diminish by nearly one-half the volume of milk of the handlers formerly under the Northwestern Indiana order), removal of the Northwestern Indiana area from the Chicago Regional order should affect the Chicago order uniform price by less than 1 cent per hundredweight.

Although some of the route disposition of handlers to be regulated will extend beyond the boundaries of the counties proposed for regulation, it is neither practical nor reasonable to stretch the regulated area to cover all areas where a handler has or might develop some route disposition. Nor is it necessary to do so to accomplish effective regulation under the order. The marketing area herein proposed is a practicable one in that it will encompass the great bulk of the fluid milk sales of handlers to be regulated.

All producer milk received at regulated plants must be made subject to classified pricing under the order, however, regardless of whether it is disposed of within or outside the marketing area. Otherwise the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area.

Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of

such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market.

It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

(2) *Class prices and differentials.* Class I and blend prices should be subject to adjustments according to plant locations both in and outside the marketing area. The aggregate returns to producers from Class I milk should remain at present levels.

Proponent cooperatives proposed varying Class I and blend prices both within and outside the marketing area according to plant locations. The "base" pricing zone in Indiana would be the present Indianapolis marketing area together with six adjacent counties now unregulated. A second pricing zone would be the present Fort Wayne marketing area. The third pricing zone would be the eight counties of the former Northwestern Indiana marketing area, the remaining four unregulated counties proposed for regulation, and Cass and Berrien Counties, Mich.

Under the producers' proposals the Class I price differentials (over the basic formula price) per hundredweight for these respective zones would be set at \$1.47, \$1.40, and \$1.38, including the 20-cent temporary increase in differential effective through April 1969. Under the cooperatives' proposal the supply-demand adjuster currently effective in the Fort Wayne and Indianapolis orders would be removed. With the exception of the State of Ohio and other counties of Indiana and Michigan where no location adjustments would apply, prices at plants outside such areas would be fixed in relation to the price at Indianapolis at a rate of minus 1.5 cents per hundredweight for each 10 miles of distance of the plant from Indianapolis.

For Fort Wayne and Indianapolis the producers' proposed Class I price levels would be the same as in the present orders without effect of the supply-demand adjustment which averaged plus 2 cents per hundredweight for the period January 1967 through July 1968. At the hearing one of the proponents, a Fort Wayne cooperative, suggested that the Class I price differential at Fort Wayne area plants be increased to \$1.43. For Northwestern Indiana, the proposed \$1.38 Class I price differential compares to similar differentials under the Chicago Regional order of \$1.34 for the South Bend location and \$1.38 at New Paris, Ind.

Handlers throughout the proposed marketing area were generally in accord with the producers' price proposals.

Certain cooperatives and handlers from Ohio markets testified in support of somewhat higher Class I price differentials for the Indiana market than those

proposed by proponent Indiana cooperatives on the basis that a better competitive relationship between Indiana handlers and handlers in Ohio regulated markets would result.

In establishing the appropriate Class I price over the wide marketing area to be covered by the proposed Indiana order, consideration must be given not only to the general level needed to encourage an adequate supply in total but also the extent to which price differences are necessary within the marketing area to achieve an appropriate allocation of available milk supplies for efficient marketing.

The general level of prices which has been effective in these markets has contributed to achievement of a reasonable balance between producer milk supplies and Class I needs. During 1967, Indianapolis handlers utilized, on the average, 77 percent of producer milk receipts in Class I. Comparable percentages for Northwestern Indiana and Fort Wayne handlers were 81 and 71 percent, respectively. On a consolidated basis, Class I use in these markets averaged 76.7 percent of aggregate producer receipts in 1967 and 75.7 percent during the first 6 months of this year.

The producers' proposal for location pricing by zones should be modified to include the four counties of Carroll, Cass, Miami, and White in the same pricing zone as Fort Wayne and to establish a fourth pricing zone which would include the Indiana counties of Elkhart, Kosciusko, Benton, Fulton, Jasper, Marshall, Newton, Pulaski, and St. Joseph, and the Michigan counties of Berrien and Cass. Such zone includes the cities of Elkhart, Mishawaka, New Paris, Rochester, and South Bend. The establishment of an additional location pricing area and westward extension of the Fort Wayne pricing area reduces slightly past price differences between Indianapolis and plants at Logansport and Rochester. The adjustments of 4 and 8 cents adopted herein would reduce location differentials for plants at these points by 6 and 5 cents, respectively, relative to Indianapolis plants. Further, for plants at New Paris, South Bend, and Elkhart the differential would be 8 cents as compared to 4 cents for plants at Fort Wayne.

Specifically, the schedule of Class I price differentials within the expanded marketing area is as follows: Indianapolis "zone," \$1.47; Fort Wayne "zone," \$1.43; Elkhart-New Paris-Rochester-South Bend "zone," \$1.39; Gary-La Porte-Valparaiso "zone," \$1.35. These prices reflect adjustments for plant location so as to encourage an appropriate allocation of available supplies. While such price differentials are slightly at variance with the producers' proposals, the aggregate returns for Class I milk would be maintained at approximately the present level for the entire area after allowing for the amount (average 2 cents per hundredweight) which resulted from the supply-demand adjuster.

No location adjustments would apply for plants in the State of Ohio, or in Indiana south of the present Indianapolis marketing area. Ohio locations have

no location adjustment under the present Indianapolis order. Similarly, much of the area in Indiana south of the present Indianapolis marketing area is in the zero zone. Virtually all the remainder is part of the Louisville-Lexington-Evansville marketing area which has a higher minimum Class I price level.

Location adjustments for milk received at plants located outside the States of Indiana and Ohio, and outside Berrien and Cass Counties, Mich., should be computed at the rate of 1.5 cents per hundredweight for each 10 miles from the plant to the nearest of several basing points in the marketing area. These basing points should be Monument Circle, Indianapolis, and the main post offices in Fort Wayne, South Bend, and Valparaiso, Ind. Use of these basing points will insure reasonable allowances for transporting distant milk to each consuming center of the marketing area.

The Class I price applicable at the various locations in the market must have, of course, a reasonable relationship to Class I price levels in markets competing for supplies and sales after taking transportation costs into account. As previously indicated, there is a substantial intermarket relationship in these respects with nearby markets in Ohio, Michigan, and Kentucky. The price levels adopted for locations within the marketing area will reflect the gradual increase in fluid market price levels from the heavy producing areas to the west and the costs of hauling in moving milk eastward from such areas.

Annual Class I price differentials at selected points in the marketing area would be as follows (also including the emergency 20-cent price increase effective through April 1969): Gary, \$1.35; Elkhart, New Paris, Mishawaka, Rochester, and South Bend, \$1.39; Fort Wayne, \$1.43; and Indianapolis, \$1.47. These may be compared with current Class I price differentials in other nearby markets, as follows:

Chicago Regional (f.o.b. Chicago).....	\$1.20
Chicago Regional (at South Bend).....	1.34
Central Illinois.....	1.39
Southern Michigan (at Niles).....	1.51
Louisville-Lexington-Evansville <sup>1</sup> .....	1.61
Miami Valley <sup>1</sup> .....	1.64
Northwestern Ohio.....	1.70
Cincinnati <sup>1</sup> .....	1.74

<sup>1</sup> Differentials for Cincinnati, Louisville-Lexington-Evansville, and Miami Valley include their 1967 average supply-demand adjustments which increased the differentials 20, 12, and 20 cents, respectively.

Thus, the Class I price differentials for the marketing area provide Class I prices which are reasonably aligned with Class I prices for neighboring Federal order markets.

The Class II price formula adopted is the same as that which has been effective under both the Indianapolis and Fort Wayne orders. Although the description of the formula computation has been modernized, the resulting level of pricing is not changed. Such formula is appropriate under the supply conditions in Indiana which leave only relative small and erratic volumes of milk available at pool

distributing plants for processing into manufactured milk products.

The butterfat differentials on both classes of milk are the same as have been effective under the Indianapolis order.

Class II prices and butterfat differentials have varied only slightly under the separate orders for Indiana markets. No questions were raised as to the propriety of applying the Indianapolis Class II price formula and butterfat differentials to the expanded market.

(3) The provisions for the diversion of producer milk should be revised.

The major cooperative associations serving the expanded market proposed that both proprietary handlers and cooperative handlers be permitted to divert producer receipts on a percentage basis in addition to the present basis which relates allowable diversions to the number of days the production of the producer is received at a pool plant. These alternative bases for diversion are used in the present Fort Wayne order.

Specifically, a cooperative association could divert milk of member producers to nonpool plants up to 35 percent of the milk of its producer members received at all pool distributing plants during the month for each of the months of September through March. Similarly, a proprietary handler could divert up to 35 percent of the total producer milk received at all pool distributing plants during the month for such period, exclusive of milk diverted from his plant by a cooperative. Such diversions of the milk of any producer to a nonpool plant would be permitted if at least one day's production of the milk of such producer were received at a pool plant during the month.

Under the present Indianapolis order provision for diversions to nonpool plants, handlers may divert on an unlimited basis during the months of April through August, but in any other month diversions may not be made on more days than the production of the producer is received at a pool plant.

The addition of the percentage basis for diversions, proposed by cooperatives, will add needed flexibility in diversions by handlers and cooperatives in this expanded market. Such provision will assist cooperatives and handlers to achieve maximum use of available producer milk in Class I through more economical handling practices. In view of these considerations, the proposal to permit cooperatives and proprietary handlers to make aggregate diversions up to 35 percent of producer milk should be adopted. A similar provision utilized under the current Fort Wayne order has met with approval by both cooperative and proprietary handlers. Milk of a producer eligible for diversion to a nonpool plant should be received at a pool plant each month, however, in an amount representing not less than 1 day's production. This will insure that the milk remains qualified for and available to the market.

A cooperative or proprietary handler diverting milk in excess of the percentage limit would be required to designate those producers whose milk must be excluded from the pool when the allowable diversion limit is exceeded. If the handler

fails to designate those producers whose milk is ineligible, making it infeasible for the market administrator to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler should be excluded as producer milk.

Diverted producer milk should be priced at the location of the pool or nonpool plant to which the milk is diverted, except when diverted to a plant located in the marketing area. Diversions made within the marketing area should be priced at the location of the pool plant from which the milk is diverted.

In accordance with the plan of location pricing, diverted milk should be priced at the plant of receipt. An exception should be made, however, in pricing diversions made within the marketing area. Most diversions between marketing area plants will take place within the same pricing zone and consequently will raise no question as to the appropriate point of pricing. However, there will be diversions between plants in the marketing area which would involve changes in pricing for producer milk.

One of the major outlets for milk in excess of the fluid requirements of pool distributing plants is a balancing plant operated by a cooperative at Fort Wayne. This plant is in an intermediate pricing zone within the marketing area. Unless milk diverted to this plant from other marketing area plants is priced at the pool plant from which diverted, those producers whose milk normally is required in the Indianapolis pricing zone but is diverted to the Fort Wayne plant would receive a lower blend price due to the location adjustment at Fort Wayne. As the result those producers whose milk is involved in the diversion would be burdened with more than their share of the cost of moving excess reserve milk at Indianapolis plants to manufacturing. Contrarily, producers in a price zone lower than that of the Fort Wayne plant could gain an advantage simply by having their excess milk diverted to the Fort Wayne plant rather than to a plant within the same zone. These results can be avoided by pricing diversions within the marketing area at the location of the pool plant from which diverted.

A cooperative that operates a nonpool manufacturing plant proposed that the definition of producer milk include a provision to allow transfers from its plant to pool distributing plants for Class I use as an offset to diversions of producer milk during the month from pool distributing plants to its plant. It was contended that Indiana market producers should receive prior claim on any Class I sales made from pool plants before the assignment to Class I of transfers from the nonpool plant. Under the proposal, transfers of other source milk from the nonpool plant would be classified and priced as Class I only to the extent that it exceeded the quantity of producer milk diverted to the cooperative's plant during the month.

Since August 1, 1964, all Federal orders require the assignment of receipts at a Federal order pool plant of manufacturing grade milk to available use in Class

II. In the event such milk is assigned to Class I, a payment into the producer-settlement fund at the difference between the Class I price and Class II price is required. This insures that the Class I value is returned to regular producers for any of their milk replaced by such transfers. Since the record reveals no reason for special regulatory treatment for such transactions, the proposal is denied.

(4) *Miscellaneous administrative and conforming changes*—(a) *Definitions*. The term "producer" should be modified slightly from the definition presently included in the Indianapolis order so as to set forth more clearly the requirements for "status" as a producer under the Indiana order.

A "producer" should be defined as any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority or milk acceptable for fluid consumption at Federal, State, or municipal institutions, which milk either is received at a pool plant or diverted under specified conditions. This definition, which is somewhat broader than that in the present Indianapolis order, includes the criteria for identifying a producer set forth in the Indianapolis and Fort Wayne orders. This is required for applicability to the expanded market. The definition would exclude, however, any person with respect to milk fully subject to the class pricing and producer payment provisions of another order.

Producers and certain handlers proposed changes in the definition of a "fluid milk product" to exclude yogurt. They would specify also that to be excluded from the definition any sterilized product must be in an hermetically sealed glass or metal container. Such definition would be revised to specify reconstituted and concentrated skim milk also. These changes will clarify the definition and reconcile present differences in the classification of products under the separate orders. The proposed changes are adopted.

The definition of "route" should be clarified with respect to movements of fluid milk products to other plants. Presently, such movements as fluid milk products in bulk or packaged form to other plants are not included under the definition of "route." This should be changed so as to exclude only those movements of bulk fluid milk products to any milk processing plant. This will accommodate more fully the custom packaging of fluid milk products for other handlers which is practiced in this market and will be in the interest of efficiency in processing operations.

(b) *Plant requirements for pooling*. The pooling requirements for distributing plants and supply plants presently provided in the Indianapolis order should be adopted for the expanded order, subject to minor changes.

Proponent cooperatives and handlers supported adoption of the Indianapolis pool plant provisions for the expanded order. Currently, a distributing-type plant qualifies by disposing of 50 percent

of its total receipts from producers and pool supply plants on routes with at least 10 percent of such receipts disposed of in the marketing area on routes. Such requirements are herein continued subject to clarification of the present provisions and the addition of the following provision.

The pooling requirements for a distributing plant should be expanded to provide greater flexibility in monthly disposal requirements to avoid loss of pool status due to temporary changes in receipts or sales at the distributing plant. This can be accomplished by providing that a distributing plant which has met the 50 percent performance requirement in either the current or immediately preceding month and meets the minimum in-area route disposition requirement (i.e., 10 percent of total receipts at such plant) in the current month may retain pool status.

There are circumstances, such as minor changes in receipts or Class I sales, which may cause a distributing plant difficulty in meeting the 50 percent route disposition requirement for a particular month. The 2-month basis for meeting the pooling requirement for a distributing plant will minimize the occasions of inadvertent loss of pool plant status.

Also, the definition of a pool distributing plant should be clarified to insure that receipts of milk by diversion from other pool distributing plants will not be counted as producer receipts in determining percentages for qualification purposes. Milk received in such manner is a part of the normal supply of milk for the diverting handler and is included in his receipts. There are no supply plants in the market at this time. However, supply plant receipts may be a normal source of supply for the Class I needs of pool distributing plants. Consequently, any such receipts should be included in the receipts base for the purpose of determining the percentages of receipts sold on routes.

The cooperatives and handlers also proposed continuance of the main requirements for pooling supply plants which are provided in the Indianapolis order. Essentially, these provisions require the shipment each month of at least 50 percent of plant receipts of Grade A milk as fluid milk products to pool distributing plants. Qualifying shipments from supply plants, however, should be in the form of milk or skim milk since these are the products which would be needed to supplement direct-ship supplies in this market. A supply plant which meets the 50 percent shipping standard each month of September through February is automatically designated as a pool plant for the succeeding months of April through August (unless a written request for nonpool status is submitted to the market administrator). These percentage requirements are basically comparable with those in other nearby Federal orders.

Producers proposed, however, to eliminate the special provision of the Indianapolis order which permits a supply plant to qualify during the months of

April through July by meeting the delivery performance standards in each of the preceding months of August through March as a supply plant or distributing plant, and for December through March by meeting the supply plant requirements. This provision for supply plant qualification was adopted in May 1962 to accommodate a particular circumstance, that of a pool distributing plant which had discontinued its bottling operations but continued in the market for a time as a supply plant. They pointed out that with the closing of the plant for which the provision was developed, no purpose is served by continuing it in the order. Since the provision is obsolete, it is deleted from the order.

Provision should be made to exclude from pooling a supply plant which meets the pooling requirements of another order as well as those of this order, when greater shipments are made to plants regulated by such other order. This will assure that any supply plant which associates milk with the pool will be regulated under this order only if the plant continues its association with this market during each month. This is important in view of the automatic pooling provisions provided for in this and other nearby orders. As previously indicated there are no supply plants associated with this market at present.

(c) *Transfer provisions.* The present Indianapolis order interplant transfer provisions are adopted for the expanded order, except that the provision which requires a Class I classification on transfers or diversions of fluid milk products to nonpool plants located 300 miles or more from Indianapolis should be removed.

A Wisconsin cooperative, representing a number of producers supplying the Indiana market, proposed elimination of the mileage limitation on the transfer or diversion of fluid milk products to nonpool plants as Class II milk. It was the cooperative's position that savings could accrue on distant producer milk diverted to Wisconsin plants when not needed by local handlers for their fluid milk requirements by avoidance of the additional transportation cost involved in moving milk to plants within a 300-mile radius of Indianapolis. The cooperative pointed to the fact that there are adequate manufacturing facilities available in the Wisconsin segment of the production area to handle such reserve supplies of milk.

The present Indianapolis transfer provision which permits transfers or diversions to nonpool plants located 300 miles or more from Indianapolis only as Class I milk was made effective July 1, 1963. At that time the mileage limit was extended from a 150-mile radius which originally had prevailed under the order but had been suspended to permit diversion to more distant plants. It was found that an area within 300 miles of Indianapolis included all the regular manufacturing outlets needed for Class II disposition under the prevailing supply and marketing conditions, and that with adoption of the provision undue expense of audit verification by the market administra-

tor could be avoided. Also, all producer farms delivering milk to the market then were located within 150 miles of Indianapolis.

The production area for the proposed Indiana market encompasses a substantially larger area than did the milkshed for the Indianapolis market at the time of the June 1963 amendment. The Indiana market milkshed extends well into the heavy milk production areas of central and western Wisconsin. About 17 percent of all producer farms (representing about 16 percent of total producer milk received by plants in the Indiana market) are located in central and western Wisconsin.

Manufacturing plants in the Wisconsin portion of the production area near producer farms supplying milk for the Indiana market may be located more than 300 miles from Indianapolis. These plants serve as readily available outlets for the reserve milk of this market associated with the producer supplies located in Wisconsin.

It is in the interest of efficient marketing of producer milk, therefore, to permit the movement of reserve supplies to manufacturing facilities wherever located. Consequently, the current Indianapolis provision which provides for transfers or diversions only as Class I milk if moved to a nonpool plant 300 miles or more from Indianapolis is not included in this amended order.

(d) *Application of seasonal incentive (Louisville) plan.* The current seasonal incentive payment provisions under the Indianapolis order should be continued and made applicable to the expanded market following the current pay-back period to expire December 31, 1968.

Producers supplying all segments of the market supported application of such Indianapolis order provisions. These provisions provide for the withholding by the market administrator of 8 percent of the average monthly basic formula price for the preceding calendar year, but not to exceed 30 cents, with respect to each hundredweight of producer milk delivered to the market during each month of April through July. Pay-back to producers of the aggregate monies accumulated during the months of April through July is made at a monthly rate of 25 percent in each of the months of September through December.

Currently, the seasonal incentive payment provisions of the Fort Wayne order differ from the provisions of the Indianapolis order with respect to both the rates of take-out and pay-back and the operating months. Although the Northwestern Indiana order contains no such provisions, the principal cooperative for that market has operated its own seasonal incentive payment plan.

The seasonal incentive payment plan provides a continuing inducement to dairy farmers to increase production during the period of greatest Class I demand relative to supply and highest seasonal production cost. The uniform rate of take-out and pay-back herein provided for this expanded area should continue to induce dairy farmers to increase fall production in relation to spring pro-

duction and thus encourage a more even pattern of milk deliveries throughout the year. Identical rates of "take-out" and "pay-back" throughout the common production area should eliminate unnecessary shifting of producers merely to take advantage of the different rates of "take-out" and "pay-back" which has occurred at times under separate orders.

(e) *Other administrative provisions.* The "equivalent price" provision should provide for the determination by the Secretary of an equivalent for any pricing factor, as well as any price, required by the provision of the order which is not available in the manner described. There may be unavoidable occasions when a factor ordinarily employed becomes unavailable. Provision for such determination will remove uncertainty as to the procedure to be followed in the absence of any such factor specified in the provisions of the order and thereby avoid potential interruption in the operation of the order and its important pricing function.

Producers' proposal to include the present provision under the Fort Wayne order, requiring the payment of interest on amounts due from handlers to the market administrator and from the market administrator to handlers for each month or portion thereof that such obligation is overdue, should be adopted in part.

Interest charges to handlers on overdue obligations will encourage prompt payments, which are essential to efficient operation of the order. The recommended one-half of 1 percent per month rate with respect to any such unpaid order obligation is an appropriate and reasonable payment for each month or fraction thereof that the obligation is past due. Any unpaid portion of a handler obligation would be increased by the same rate on the first day of the month following the due date under the order and on the first day of each succeeding month until paid. This procedure should provide a reasonable time to make payments prior to the application of interest. There should be no payment of interest by the market administrator, however. His payments to handlers involve mainly producer monies. The market administrator collects such monies from some handlers and pays out to others. The recipient handlers are permitted by the order to reduce payments to their producers by amounts due from the market administrator until paid by him.

All currently regulated handlers who have contributed to the administrative funds of the separate orders will continue to be regulated under the new order. In the interest of effective and equitable administration, the assets in the administrative funds which have accrued under the Indianapolis and Fort Wayne orders should be made available to the market administrator of the Indiana order for carrying out its terms and provisions. A similar procedure should be followed with respect to the reserves in the respective marketing service funds. The corresponding funds

which accrued prior to July 1, 1968, under the Northwestern Indiana order (which presently are held by the market administrator of the Chicago Regional order), should be made available to the market administrator of the Indiana order to be combined, respectively, with the corresponding funds of the other two markets involved.

The producer-settlement fund reserves of the Indianapolis and Fort Wayne orders should be combined to establish a new producer-settlement fund reserve under the merged order. This sum should be augmented by the proportion of the unobligated producer-settlement fund reserve of the Chicago Regional order associated with and attributable to the milk of producers in the month preceding the first month in which such producer milk becomes regulated under the new order. In this manner, all producers delivering to plants to be covered by the new order will share proportionately in providing the monies for the necessary producer-settlement fund reserve under the expanded order.

The above procedure relating to the disposition of all the aforesaid administrative, marketing service and producer settlement funds is necessary and desirable to implement the amendments proposed herein and would insure equitable treatment to all interested parties.

Several provisions of the order have been redrafted to incorporate conforming and clarifying changes necessary to effectuate the findings and conclusions made herewith. Except for those amendments specifically discussed above, these changes do not affect the scope or substance of the Indianapolis order, renamed the Indiana order, or its application to any handler subject thereto.

#### RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the Indiana order for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to:

(1) Receipts of producer milk (including such handler's own production);

(2) Other source milk at a pool plant allocated to Class I pursuant to §§ 1049.46(a)(3) and 1049.46(a)(7) and the corresponding steps of § 1049.46(b); and

(3) Class I milk disposed of on a route(s) in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plants from pool plants and other order plants.

#### RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDERS

The following order amending the orders as amended regulating the handling of milk in the Indianapolis, Indiana, Fort Wayne, Indiana, and Chicago Regional marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended.

DEFINITIONS	
Sec.	Act.
1049.1	Secretary.
1049.2	Department.
1049.3	Person.
1049.4	Cooperative association.
1049.5	Marketing area.
1049.6	Producer.
1049.7	Handler.
1049.8	Producer-handler.
1049.9	Distributing plant.
1049.10	Supply plant.
1049.11	Pool plant.
1049.12	Nonpool plant.
1049.13	Producer milk.
1049.14	Fluid milk product.
1049.15	Other source milk.
1049.16	Route.
1049.17	Butter price.
1049.18	
MARKET ADMINISTRATOR	
1049.25	Designation.
1049.26	Powers.
1049.27	Duties.
REPORTS, RECORDS, AND FACILITIES	
1049.30	Reports of receipts and utilization.
1049.31	Other reports.
1049.32	Payroll reports.
1049.33	Records and facilities.
1049.34	Retention of records.
CLASSIFICATION	
1049.40	Skim milk and butterfat to be classified.
1049.41	Classes of utilization.
1049.42	Shrinkage.
1049.43	Responsibility of handlers and reclassification of milk.
1049.44	Transfers.
1049.45	Computation of skim milk and butterfat in each class.
1049.46	Allocation of skim milk and butterfat classified.
MINIMUM PRICES	
1049.50	Basic formula price.
1049.51	Class prices.
1049.52	Butterfat differentials to handlers.
1049.53	Location differentials to handlers.
1049.54	Use of equivalent prices.
APPLICATION OF PROVISIONS	
1049.61	Plants subject to other Federal orders.
1049.62	Obligations of a handler operating a partially regulated distributing plant.
DETERMINATION OF PRICES TO PRODUCERS	
1049.70	Computation of the net pool obligation of each pool handler.
1049.71	Computation of uniform prices.
1049.72	Butterfat differentials to producers.
1049.73	Location differentials to producers and on nonpool milk.
PAYMENTS	
1049.80	Time and method of payment.
1049.81	Producer-settlement fund.
1049.82	Payments to the producer-settlement fund.
1049.83	Payments out of the producer-settlement fund.
1049.84	Adjustment of accounts.
1049.85	Marketing services.
1049.86	Expense of administration.
1049.87	Termination of obligations.
1049.88	Overdue accounts.
EFFECTIVE TIME, SUSPENSION OR TERMINATION	
1049.90	Effective time.
1049.91	Suspension or termination.
1049.92	Continuing power and duty of the market administrator.
1049.93	Liquidation after suspension or termination.

MISCELLANEOUS PROVISIONS

- Sec.  
1049.100 Separability of provisions.  
1049.101 Agents.

DEFINITIONS

§ 1049.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1049.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 1049.3 Department.

"Department" means the U.S. Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the U.S. Department of Agriculture.

§ 1049.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 1049.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) To have all of its activities under the control of its members.

§ 1049.6 Marketing area.

"Indiana marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of each of the Indiana counties listed below, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

- |              |             |
|--------------|-------------|
| Adams.       | Hendricks.  |
| Allen.       | Henry.      |
| Bartholomew. | Howard.     |
| Blackford.   | Huntington. |
| Boone.       | Jackson.    |
| Brown.       | Jay.        |
| Cass.        | Johnson.    |
| Clay.        | Kosciusko.  |
| Clinton.     | Lagrange.   |
| Decatur.     | Lake.       |
| De Kalb.     | La Porte.   |
| Delaware.    | Lawrence.   |
| Elkhart.     | Madison.    |
| Fayette.     | Marion.     |
| Fountain.    | Marshall.   |
| Franklin.    | Miami.      |
| Fulton.      | Monroe.     |
| Grant.       | Montgomery. |
| Hamilton.    | Morgan.     |
| Hancock.     | Noble.      |

- |             |             |
|-------------|-------------|
| Owen.       | Tippecanoe. |
| Parke.      | Tipton.     |
| Porter.     | Union.      |
| Putnam.     | Vermillion. |
| Randolph.   | Vigo.       |
| Rush.       | Wabash.     |
| Shelby.     | Warren.     |
| Steuben.    | Wayne.      |
| St. Joseph. | Wells.      |
| Starke.     | Whitley.    |

§ 1049.7 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who in compliance with Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State, or municipal institutions, which milk is received at a pool plant or is diverted pursuant to § 1049.14. "Producer" shall not include any person with respect to milk which is fully subject to the class pricing and producer payment provisions of another order issued pursuant to the Act.

§ 1049.8 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1049.14;

(c) Any person who operates a partially regulated distributing plant; or

(d) A producer-handler, or any person who operates an other order plant.

§ 1049.9 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal inter-prise and risk of such person.

§ 1049.10 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area and from which fluid milk products are disposed of during the month on routes in the marketing area.

§ 1049.11 Supply plant.

"Supply plant" means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk, cream, or skim milk to a distributing plant during the month.

§ 1049.12 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section, except the plant of a producer-handler or a plant exempt pursuant to § 1049.61: *Provided*, That if a portion of a plant is

physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition it shall not be considered as part of a plant qualified pursuant to this section.

(a) A distributing plant with:

(1) Total route sales, exclusive of packaged fluid milk products received from other plants, in an amount not less than 50 percent of Grade A milk received at such plant during the month from dairy farmers (excluding receipts of producer milk by diversion pursuant to § 1049.14) and supply plants, except that a plant meeting such percentage requirement for the preceding month may remain qualified under this subparagraph in the current month; and

(2) Route sales within the marketing area during the month of at least 10 percent of such receipts, such route sales to be exclusive of packaged fluid milk products received from other plants: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if fluid milk products are disposed of from the plant in the marketing area on routes during such month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph.

§ 1049.13 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool supply plant that is not

an other order plant or a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

#### § 1049.14 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer, other than milk received at a pool plant by diversion from a plant at which such milk would be fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act, which is:

(a) Received at one or more pool plants during the month (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant); or

(b) Received at a pool plant at least one day during the month and then diverted by the operator of a pool plant or by a cooperative association to a nonpool plant during the month under any of the following conditions:

(1) During April through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant (other than that of a producer-handler) on any number of days during the month.

(2) During September through March the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant (other than that of a producer-handler) shall be limited to the amounts specified in subdivisions (i) and (ii) of this subparagraph:

(i) The operator of a pool plant may divert the milk of producers (except producer members of a cooperative association which is diverting milk under the percentage limit of subdivision (ii) of this subparagraph) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 35 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of its individual member producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of member producers not exceeding 35 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted to a nonpool plant in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as pro-

ducer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(5) If, notwithstanding the provisions of this paragraph, diverted milk is fully subject to the pricing and pooling provisions of another Federal order, it shall not be producer milk under this order.

(d) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant to which the milk is diverted, unless diverted to a plant located in any part of the marketing area or to a plant at which no location adjustment would apply pursuant to § 1049.53, in which case such diverted milk shall be deemed to be received at the pool plant from which diverted.

#### § 1049.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), "fortified" products, "dietary" milk products, concentrated milk or skim milk, reconstituted milk, skim milk, or milk drinks (plain or flavored), and cream or any mixture in fluid form of cream, milk or skim milk (except egg-nog, yogurt, milk shake mix, frozen dessert mix, sour cream, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk, and sterilized products packaged in hermetically sealed metal or glass containers).

#### § 1049.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month of fluid milk products, except: (1) Fluid milk products received from pool plants either by transfer or diversion, (2) producer milk (including own farm production), or (3) inventory of fluid milk products on hand at the beginning of the month;

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid milk products not otherwise accounted for.

#### § 1049.17 Route.

"Route" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1049.41(a) (1) other than a delivery in bulk form to any milk processing plant.

#### § 1049.18 Butter price.

"Butter price" means the average price per pound of Grade A (92-score) bulk

creamery butter at Chicago, as reported for the month by the Department.

#### MARKET ADMINISTRATOR

#### § 1049.25 Designation.

The agency for the administration of this part shall be a market administrator, who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

#### § 1049.26 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

#### § 1049.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties execute and deliver to the Secretary a bond effective as of the date on which he enters upon his duties as market administrator and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with satisfactory surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1049.86 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses except those incurred under § 1049.85 necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1049.30, 1049.31, and 1049.32, nor payments pursuant to §§ 1049.80, 1049.82, 1049.84, 1049.85, 1049.86, and 1049.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The sixth day of each month, the minimum price for Class I milk pursuant to § 1049.51(a) and the Class I butterfat differential pursuant to § 1049.52(a), both for the current month, and the minimum price for Class II milk pursuant to § 1049.51(b) and the Class II butterfat differential pursuant to § 1049.52(b), both for the preceding month; and

(2) The 14th day after the end of each month, the uniform price pursuant to § 1049.71 and the butterfat differential pursuant to § 1049.72;

(k) On or before the 14th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month;

(l) On or before the 14th day after the end of each month, notify each handler who reported pursuant to § 1049.30 of:

(1) The amount and value of his milk in each class computed pursuant to § 1049.46 and § 1049.70;

(2) The uniform price computed pursuant to § 1049.71; and

(3) The amounts to be paid by such handler pursuant to §§ 1049.82, 1049.85, and 1049.86 and the amount, if any, due such handler pursuant to § 1049.83;

(m) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1049.46(a)(8) and the corresponding step of § 1049.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1049.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

#### REPORTS, RECORDS, AND FACILITIES

##### § 1049.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler for each of his pool plants and a cooperative association with respect to milk for which it is the handler shall report to the market administrator for such month, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Receipts of producer milk (including own farm production);

(2) Fluid milk products received by transfer or diversion from pool plants;

(3) Other source milk;

(4) A separate report of producer milk diverted pursuant to § 1049.14: *Provided*, That on or before the day prior to diverting producer milk pursuant to § 1049.14, each handler shall notify the market administrator of his intention to divert such milk, the date or dates of such diversion, and the plant to which such milk is to be diverted; and

(5) Inventories of fluid milk products on hand at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk on routes inside the marketing area; and

(c) Such other information with respect to receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

##### § 1049.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler specified in § 1049.8 (c) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1049.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk.

##### § 1049.32 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler, except a producer-handler and a handler exempt pursuant to § 1049.61, shall report to the market administrator in the detail and on forms prescribed by the market administrator, his producer payroll for that month which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer and the number of

days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handlers payment, together with the price paid and the amount and nature of any deductions;

(b) Each handler, except one who elects to make payments pursuant to § 1049.62(a), operating a partially regulated distributing plant shall report to the market administrator on or before the 20th day after the end of the month for each dairy farmer from whom milk was received the same information as required from handlers operating pool plants pursuant to paragraph (a) of this section.

##### § 1049.33 Records and facilities.

Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of each month; and

(d) Payments to producers or dairy farmers, as the case may be, and cooperative associations, including the amount and nature of any deductions and the disbursement of moneys so deducted.

##### § 1049.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

#### CLASSIFICATION

##### § 1049.40 Skim milk and butterfat to be classified.

Skim milk and butterfat which are required to be reported pursuant to § 1049.30 shall be classified each month by the market administrator pursuant to

the provisions of §§ 1049.41 through 1049.46.

#### § 1049.41 Classes of utilization.

Subject to the conditions set forth in §§ 1049.42 through 1049.46, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of from the plant in the form of fluid milk products, other than those classified pursuant to paragraph (b) (2), (3), (4), and (5), of this section, except that fluid milk products which have been fortified by the addition of milk solids shall be Class I only up to the weight of an equal volume of an unmodified fluid milk product of the same nature and butterfat content; and

(2) Not specifically accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce any product other than a fluid milk product;

(2) Skim milk and butterfat contained in fluid milk products disposed of for livestock feed or in products which are dumped, if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;

(3) Skim milk and butterfat in fluid milk products delivered in bulk to and used at commercial food establishments devoted exclusively to the manufacture of bakery products, candy, or processed foods packaged in hermetically sealed glass or metal containers;

(4) Skim milk contained in that portion of fortified fluid milk products not classified as Class I milk pursuant to paragraph (a) (1) of this section;

(5) Skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month; and

(6) Contained in shrinkage of skim milk and butterfat, respectively, prorated pursuant to § 1049.42(b) (2) and (3) for each pool plant, not to exceed the quantities calculated pursuant to subdivisions (i) through (vi) of this subparagraph;

(i) Two percent of receipts of skim milk and butterfat physically received direct from producers and milk received in bulk by diversion from another pool plant pursuant to § 1049.14;

(ii) Plus 1.5 percent of milk or skim milk received by transfer from other pool plants in bulk;

(iii) Plus 1.5 percent of receipts of milk or skim milk in bulk from another order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler;

(iv) Plus 1.5 percent of receipts of milk or skim milk in bulk from unregulated supply plant, exclusive of the quantity for which Class II utilization was requested by the handler;

(v) Less 1.5 percent of bulk transfers of milk or skim milk to a pool plant of another handler; and

(vi) Less 1.5 percent of bulk transfers of milk or skim milk to nonpool plants.

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1049.42(b) (1).

#### § 1049.42 Shrinkage.

The market administrator shall assign shrinkage to each handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts among (1) skim milk and butterfat in other source milk received in bulk fluid form, exclusive of that specified in § 1049.41(b) (6) (ii), (iii), and (iv); (2) skim milk and butterfat in producer milk (excluding milk diverted to other plants pursuant to § 1049.14); and (3) skim milk and butterfat in bulk receipts of milk and skim milk including diversions or transfers from other pool plants, from other order plants and unregulated supply plants, exclusive of the quantities received from other order plants and unregulated supply plants for which Class II utilization was requested by the handlers, in excess of transfers of bulk milk or skim milk to other plants.

#### § 1049.43 Responsibility of handler and reclassification of milk.

All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

#### § 1049.44 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted to another pool plant subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1049.46(a) (8) and the corresponding step of § 1049.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1049.46(a) (3), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1049.46(a) (7) or (8) and the corresponding steps of § 1049.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if moved from a pool plant to a producer-handler.

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which

case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1049.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk.

(d) As follows, if transferred or diverted to another order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation

under the conditions set forth in subparagraph (3) of this paragraph;

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified at Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1049.41.

#### § 1049.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to this part and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler. If any of the water contained in the milk from which a product is made, is removed before the product is utilized or disposed of by the handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with the milk solids.

#### § 1049.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1049.45, the market administrator shall determine the classification of producer milk received at each pool plant each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1049.41(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants; and

(c) (i) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (4) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk;

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1049.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) Subtract from the pounds of skim milk remaining in each class the pounds

of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1049.44(a); and

(10) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

#### MINIMUM PRICES

##### § 1049.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month, rounded to the nearest full cent. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential computed at 0.12 times the butter price for the month and rounded to the nearest one-tenth cent. For the purpose of computing Class I prices from the effective date hereof through April 1969, the basic formula price shall be not less than \$4.33.

##### § 1049.51 Class prices.

Subject to the provisions of §§ 1049.52 and 1049.53, the minimum class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month plus \$1.27, plus 20 cents through April 1969.

(b) *Class II milk price.* The Class II milk price shall be the basic formula price computed pursuant to § 1049.50, but not to exceed an amount computed as follows:

(1) Multiply the butter price by 4.2;  
(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

##### § 1049.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, class prices for the month pursuant to § 1049.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation at the appropriate rate, rounded to

the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the butter price for the preceding month by 0.120.

(b) *Class II price.* Multiply the butter price for the month by 0.113.

##### § 1049.53 Location differentials to handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in subparagraph (1) (i) of this paragraph, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the price computed pursuant to § 1049.51(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to subparagraph (1) or (2) of this paragraph, respectively. For the purpose of this section and § 1049.73, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(1) At any plant located within:

Rate of adjustment  
per hundredweight  
(cents)

- |   |    |
|---|----|
| (i) The State of Ohio or any Indiana county not specifically named in subdivision (ii) through (iv) of this subparagraph.....   | 0  |
| (ii) Any of the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, La Grange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley..... | 4  |
| (iii) Any of the Indiana counties of: Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph, and Berrien and Cass Counties, Mich.....           | 8  |
| (iv) Any of the Indiana counties of: Lake, La Porte, Porter, Starke.....  | 12 |

(2) For any plant at a location outside the territory specified in the preceding subparagraph (1) of this paragraph, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Ind., or the main post offices of Fort Wayne, South Bend, or Valparaiso, Ind., and shall be 1.5 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to subparagraph (1) of this paragraph applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

##### § 1049.54 Use of equivalent prices.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor which is required.

#### APPLICATION OF PROVISIONS

##### § 1049.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as the operator of a plant specified in paragraph (a), (b), or (c) of this section the provisions of this part shall not apply, except that such handler shall, with respect to his total receipts and disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator:

(a) A distributing plant from which the Secretary determines a greater proportion of fluid milk products is disposed of on routes in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition on routes is made in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(b) A distributing plant which meets the requirements set forth in § 1049.12(a) which also meets the requirements of another order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other order; and

(c) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1049.12(b) and a greater volume of fluid milk products is moved to pool distributing plants qualified on the basis of route sales in this marketing area.

##### § 1049.62 Obligations of a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to

§§ 1049.30 and 1049.31(b) the information necessary to compute the amount specified in paragraph (b) of this section, he shall pay the amount computed pursuant to paragraph (a) of this section:

(a) An amount computed as follows:  
(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is greater.

(b) Except as a handler may elect the option pursuant to paragraph (a) of this section, an amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1049.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1049.70(e) and a credit in the amount specified in § 1049.82(b) (2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1049.30 and 1049.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1049.12(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like

payments made by the operator of a plant(s) included in the computations pursuant to subparagraph (1) of this paragraph and (ii) any payments made for such month to the producer-settlement fund of another order issued pursuant to the Act due to the plant being a partially regulated distributing plant under such other order.

#### DETERMINATION OF PRICES TO PRODUCERS

#### § 1049.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1049.46(c), by the applicable class prices (adjusted pursuant to §§ 1049.52 and 1049.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1049.46(a) (10) and the corresponding step of § 1049.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.46(a) (5) and the corresponding step of § 1049.46(b);

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1049.46(a) (3) and the corresponding step of § 1049.46(b); and

(e) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1049.46(a) (7) and the corresponding step of § 1049.46(b).

#### § 1049.71 Computation of uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.70 for all handlers who filed the reports prescribed by § 1049.30 for the month and who made the payments pursuant to § 1049.82 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1049.73;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1049.72 and multiplying the result by the total hundredweight of such milk;

(d) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.70(e);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e) (2) of this section by the weighted average price;

(h) Subtract for each month of April through July the amount obtained by multiplying the hundredweight of producer milk included in these computations by a rate that is equal to 8 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but that is not more than 30 cents;

(i) Add for each of the months of September through December, one-fourth of the total amount subtracted pursuant to paragraph (h) of this section for the preceding months of April through July;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations;

(k) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

#### § 1049.72 Butterfat differentials to producers.

The uniform price for producer milk shall be increased or decreased for each one-tenth of 1 percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 1049.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resultant figure to the nearest one-tenth cent.

#### § 1049.73 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.53; and

(b) For purposes of computations pursuant to §§ 1049.82 and 1049.83 the weighted average price shall be adjusted at the rates set forth in § 1049.53 applicable at the location of the nonpool plant from which the milk was received.

## PAYMENTS

**§ 1049.80 Time and method of payment.**

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at not less than the Class II price for the preceding month; and

(2) On or before the 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price adjusted pursuant to §§ 1049.72, 1049.73, and 1049.85, less any payment made pursuant to subparagraph (1) of this paragraph. If by such date the handler has not received full payment from the market administrator pursuant to § 1049.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay to each cooperative association, on or before the 10th day of the following month, for milk the handler receives during the month from a pool plant operated by such association, not less than the minimum prices for milk in each class, subject to the applicable location and butterfat differentials.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

**§ 1049.81 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1049.82, 1049.83, 1049.84, and 1049.88 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1049.83, 1049.84, and 1049.88, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1049.71(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1049.80 in accordance with the requirements of § 1049.71(d).

**§ 1049.82 Payments to the producer-settlement fund.**

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The total of the net pool obligation computed pursuant to § 1049.70 for such handler; and

(b) The sum of—

(1) The value of such handler's producer milk at the applicable uniform prices specified in § 1049.80; and

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1049.70(e).

**§ 1049.83 Payment out of the producer-settlement fund.**

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1049.82(b) exceeds the amount computed pursuant to § 1049.82(a). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

**§ 1049.84 Adjustment of accounts.**

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

**§ 1049.85 Marketing services.**

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1049.80 shall deduct 5 cents

per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

**§ 1049.86 Expense of administration.**

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect (a) to producer milk, including such handler's own farm production, (b) other source milk at a pool plant allocated to Class I pursuant to §§ 1049.46(a)(3) and 1049.46(a)(7) and the corresponding steps of § 1049.46(b), and (c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

**§ 1049.87 Termination of obligations.**

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following:

(1) The amount of the obligation;

(2) The months during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

#### § 1049.88 Overdue accounts.

Any unpaid obligation of a handler pursuant to § 1049.62, 1049.82, 1049.84(a), 1049.85(a), or 1049.86 shall be increased one-half of 1 percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

#### EFFECTIVE TIME, SUSPENSION OF TERMINATION

#### § 1049.90 Effective time.

The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

#### § 1049.91 Suspension or termination.

The Secretary shall suspend or terminate any or all of the provisions of this part whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

#### § 1049.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such person pursuant thereto.

#### § 1049.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

#### MISCELLANEOUS PROVISIONS

#### § 1049.100 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

#### § 1049.101 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

### PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

#### § 1030.6 [Amended]

1. In § 1030.6, paragraph (b) is revoked.

2. Section 1030.85 is revised to read as follows:

#### § 1030.85 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.84(b) exceeds the amount computed pursuant to § 1030.70: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available; *And provided further*, That during the first month an order is effective for the Indiana marketing area (Part 1049), the market administrator shall pay to the market administrator of the order regulating the handling of milk in the Indiana marketing area, for inclusion in the producer-settlement fund reserve of such order, such portion of the unobligated balance in the producer-settlement fund reserve which is associated with and attributable to the milk of producers for the month prior to the effective date of the Indiana order and which is regulated under the Indiana order.

Signed at Washington, D.C., on November 7, 1968.

JOHN C. BLUM,  
Deputy Administrator,  
Regulatory Programs.

[F.R. Doc. 68-13618; Filed, Nov. 12, 1968; 8:46 a.m.]

## SECURITIES AND EXCHANGE COMMISSION

[ 17 CFR Part 270 ]

[Release No. IC-5533]

### PROPOSED QUANTITY DISCOUNTS ON INVESTMENT COMPANY SECURITIES

#### Extension of Time for Public Comments

The Securities and Exchange Commission today announced that it has authorized an extension to November 29, 1968, of the due date for comments upon its proposal for the revision of Rule 22d-1 (17 CFR § 270.22d-1) under the Investment Company Act of 1940. The proposal was published on October 7, 1968, in Investment Company Act Release No. 5507 (in the FEDERAL REGISTER on October 12, 1968 at 33 F.R. 15262).

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

NOVEMBER 5, 1968.

[F.R. Doc. 68-13601; Filed, Nov. 12, 1968; 8:45 a.m.]